

No. 9(1)81-8Lab/1456.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s Mini Carbs India Ltd., 14/7, Mathura Road, Faridabad:—

IN THE COURT OF SHRI ISHWAR
PRASAD CHAUDHRY,
PRESIDING OFFICER.
LAOBUR COURT, HARYANA,
FARIDABAD

Reference No. 512 of 1980
between

SHRI DURPAT RAM, WORKMAN AND
THE MANAGEMENT OF M/S MINI
CARBS INDIA LTD., 14/7, MATHURA
ROAD, FARIDABAD.

Present:

Shri K. M. Rajgopalan alongwith
workman.

None for the respondent-management.

AWARD

This reference No. 512 of 1980 has been referred to this court by the Hon'ble Governor of Haryana.—vide his order No. ID/FD/219-80/54988, dated 27th October, 1980 under section 10(i)(c) of the Industrial Disputes Act. for adjudication of the dispute existing between the workman Shri Durpat Ram and the management of M/s Mini Carbs India Ltd., 14/7, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Durpat Ram, was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to both the parties, who appeared on 18th December, 1980. But on 28th January, 1981, the workman Shri Durpat Ram made a statement in this court that he had settled his dispute with the respondent-management. According to which the management had taken him on duty from 21st January, 1981, so he did not want to pursue this reference. He further stated that he would file his claim under section 33(c)(2) of the Industrial Disputes Act for his absence and suspension period, separately.

In the light of statement made by the workman, I hold that there is now no dispute between the workman and the management as the workman has joined his duty from 21st January, 1981. No order as to costs. This be read in answer to the reference.

The 30th January, 1981.

ISHWAR PARSAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 241, dated 30th January, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the acknowledgement of the award may please be sent to this court within a week.

ISHWAR PRASAD CHAUDHRY
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/1457.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Indian Aluminium Cables Ltd., 12/1 Mathura Road, Faridabad.

IN THE COURT OF SHRI ISHWAR
PRASAD CHAUDHRY,
PRESIDING OFFICER.
LAOBUR COURT, HARYANA,
FARIDABAD

Reference No. 160 of 1980
between
SHRI RAKESH JAIN WORKMAN AND
THE MANAGEMENT OF M/S INDIAN
ALUMINIUM CABLES LTD., 12/1,
MATHURA ROAD, FARIDABAD.

Present:

Shri Rakesh Jain, workman in person
with Shri M. P. Gupta.

Shri C. M. Lal for the management.

AWARD

This reference No. 160 of 1980 has been referred to this court by the Hon'ble Governor of Haryana.—vide his order

No. ID/FD/18-80/12093, dated 6th March, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute between Shri Rakesh Jain, workman and the management of M/s Indian Aluminium Cables Ltd., 12/1, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Rakesh Jain was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties. The parties appeared through their authorised representatives and filed their pleadings. On the pleadings of the parties the following issues were framed on 2nd June, 1980:—

(1) Whether this court has no jurisdiction to try this case as this case falls under the jurisdiction of Government of Karnataka and the reference made by the Haryana Government is bad in law?

OPM.

(2) Whether the termination of the services of the workman is proper and justified? If not, to what relief is he entitled?

OPP.

(3) Whether the workman abandoned the service of the respondent on his own accord being absent from duty?

OPM.

(4) Relief.

And the case was fixed for the evidence of the parties. But on 30th January, 1981, the workman Shri Rakesh Jain made a statement on oath in this court that he has settled the dispute mutually. He further stated that he has received a sum of Rs. 5,000 (Rs. Five Thousand only) in full and final settlement of his claim, dues and dispute including his right of the reinstatement and re-employment from the respondent management. This statement was duly agreed to by the representative of the management and the above-said payment was made to the workman. While answering the reference, I give my award that the workman has received a sum of Rs. 5,000 from the management in full and final settlement of his claim, dues and

dispute. He is not entitled to any relief. This be read in answer of this reference. The 30th January, 1981.

ISHWAR PARSAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 242, dated 30th January, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PARSAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab./1458.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Bata India, Ltd., Faridabad.

IN THE COURT OF SHRI ISHWAR PARSAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 267 of 1980
between
SHRI RAM KUMAR, WORKMAN AND
THE MANAGEMENT OF M/S BATA
INDIA LTD., FARIDABAD.

Present:—

Workman in person.
Shri K. B. Sahuja, for the management.

AWARD

This reference No. 267 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/RD/82-80/34624, dated 26th June, 1980 under section 10(i)(c) of the Industrial Dispute Act, 1947, for adjudication of the dispute existing between Shri Ram Kumar, workman and the management of

M/s Bata India Ltd., Faridabad. The term of the reference was:—

Whether the dismissal of Shri Ram Kumar was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were sent to the parties. Both the parties appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed on 21st August, 1980:—

1. Whether the domestic enquiry conducted by the respondent is proper, justified and in order ? If so to what effect ?
2. Whether the dismissal of the workman is proper, justified and in order ? If not, to what relief is he entitled ?
3. Relief.

And the case was fixed for the evidence of the parties. But on 21st January, 1981, the dispute was settled between the parties. Shri Ram Kumar workman made a statement on oath in this court that according to this settlement Ex. W-1 he had received a sum of Rs. 11,000 (Rs. Eleven Thousand only) in full and final settlement of his claim, dues and dispute including his right of reinstatement and re-employment. The settlement is Ex. W-1. This statement was duly agreed to by the representative of the management. While answering the reference, I give my award that the workman has received a sum of Rs. 11,000 from the management in full and final settlement of his claim, dues and dispute. He is not entitled to any relief. This be read in answer at this report.

The 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 243, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may

please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab./1459.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Subhadra Textile, Mills, Sector-25, Ballagarh.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 546 of 1980.

between
SHRI YAD RAM, WORKMAN AND
THE MANAGEMENT OF M/S SUB-
HADRA TEXTILE MILLS, SECTOR-25
BALLABGARH.

Present:—

Workman in person.

Shri Dhanesh Gupta, Partner of the respondent-management.

AWARD

This reference No. 546 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/121-80/58697, dated 2nd December, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Yad Ram, workman and the management of M/s Subhadra Textile Mills, Sector-25, Ballabgarh. The term of the reference was:—

Whether the termination of services of Shri Yad Ram, was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in response to the usual notices. It is not necessary to go into the merits of the case as an amicable settlement has been arrived at between the parties. The workman made a statement in this court that he had settled his dispute with the management mutually and had also received a sum of Rs. 300 (Rs. Three hundred only) in full and final settlement of

his claim, dues and dispute including the right of his reinstatement or re-employment. I, therefore, give my award that there is no dispute between the parties at present. No order as to costs.

The 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 229, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab./1461.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Hemla Embroidery Mills, 14/6, Mathura Road, Faridabad.

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 91 of 1980

between

SHRI KISHAN BAHADUR WORKMAN
AND THE MANAGEMENT OF M/S.
HEMLA EMBROIDERY MILLS, 14/6
MATHURA ROAD, FARIDABAD.

Present:—

Shri Darshan Singh, for the workman.

Shri R. C. Sharma, for the Management.

AWARD

This reference No. 91 of 1980 has been referred to this court by the Hon'ble Governor of Haryana.—vide his order No. ID/FD/31-80/9736, dated the 25th February, 1980 under Section 10(i)(c) of the

Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Kishan Bahadur workman and the management of M/s. Hemla Embroidery Mills 14/6 Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Kishan Bahadur was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were sent to the parties. The parties appeared and filed their pleadings. On the pleadings of the parties the following issues were framed on 3rd June, 1980:—

1. Whether the relation of employer and employee existed between the claimant and the respondent-management ? If so, to what effect ? OPP.
2. Whether the termination of the services of the workman is proper and justified ? If not, to what relief is he entitled ?
3. Relief.

Then the case was fixed for the evidence of the parties. The evidence of both the parties were recorded and they closed their case. The case was pending for award in this court. But on 16th January, 1981, the parties appeared in this court and stated that they had settled the dispute. The representative of the management filed a copy of settlement which is Exhibit M-1. It is just and fair. He also made a statement in this court that the workman had settled his dispute with the management mutually and he did not want to proceed further in the case. The copy of settlement Exhibit M-1 was duly admitted by the representative of the workman. I, therefore, give my award that there is no dispute between the parties at present. No order as to costs.

The 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 228, dated the 30th January, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government of

Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,

Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab./1462.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947. (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Golden Paper Udyog 14/7, Mathura Road, Faridabad.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 484 of 1980
between

SHRI SATISH KUMAR, WORKMAN AND THE MANAGEMENT OF M/S GOLDEN PAPER UDYOG, 14/7, MATHURA ROAD, FARIDABAD.

Present:—

None for the workman.

Shri R. C. Sharma, for the respondent management.

AWARD

This reference No. 484 of 1980 has been referred to this court by the Hon'ble Government of Haryana,—vide his order No. ID/FD/192-80/53135, dated 14th October, 1980, under section 10(i)(c) of the Industrial Disputes Act, for adjudication of the dispute existing between the workman Shri Satish Kumar and the management of M/s Golden Paper Udyog, 14/7, Mathura, Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Satish Kumar was justified and in order ? If not, to what relief is he entitled ?

After receiving this reference notices were sent to both the parties, who appeared on 5th November, 1980. But on 7th January, 1981, none was present from the side of the workman. It was 2.15 p.m. On the previous date of hearing Shri R. L.

Sharma appeared on behalf of the workman. The case was called thrice. I proceed *ex parte* against the workman and the case was fixed for *ex parte* evidence of the management for 8th January, 1981.

On 8th January, 1981, *ex parte* evidence of the management was recorded. Shri R. C. Sharma, authorised representative of the management appeared on behalf of the management, who stated that the workman had settled his dispute with the management according to which the workman had received Rs. 874.80 p. The photo copy of the receipt is Ex. M-1. The workman had written a letter for withdrawal of case which is Ex. M-2. He further stated that now no claim or dispute was pending against this workman, including his right of reinstatement/reemployment, and closed its case.

In view of the un-rebutted *ex parte* evidence produced by the management I am left with no choice except to believe the version of the management. Over and above this my findings get support from the absenting of the workman in the proceedings in this court. I feel that the workman had settled his dispute with the respondent management and no claim is made out of the workman against the management. I give my award accordingly. No order as to costs. This be read in answer of this reference.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,

Labour Court, Haryana, Faridabad.

Dated the 30th January, 1981.

Endorsement No. 244, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,

Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab./1465.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947. (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer,

Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Golden Polyester Industries Pvt. Ltd., 14th Mile Stone, Mathura Road, Faridabad.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 317 of 1980
between

SHRI TARA KANT JHA, WORKMAN AND THE MANAGEMENT OF M/S. GOLDEN POLYSTER INDUSTRIES PVT. LTD., 14TH MILE STONE, MATHURA ROAD, FARIDABAD.

Present:—

Shri Tara Kant Jha, workman in person.

Shri H. R. Dua, for the respondent-management.

AWARD

This reference No. 317 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/101-80/39572, dated 31st July, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Tara Kant Jha and the management of M/s Golde Polyester Industries, Pvt. Ltd., 14th Mile Stone, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Tara Kant Jha was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to the parties, who appeared and on the pleadings of the parties issues were framed by me on 5th November, 1980, and the case was fixed for evidence of the parties for 2nd December, 1980. On 21st January, 1981, both the parties arrived at a settlement and their statements were recorded. Shri Tara Kant Jha, workman concerned stated that if the management would pay him Rs. 3,000 than he was ready to withdraw his reference and he would not claim for reinstatement/reemployment. He further prayed that he be granted full benefit of Provident Fund.

This statement of the workman was also agreed to by Shri R. K. Singh, Office Asstt. of the respondent. He stated that the management had agreed to pay him Rs. 3,000 in full and final settlement of his all claims. He further stated that the workman would be given full benefit towards his Provident fund.

In the light of the statement made by the parties, I hold that the demand raised by the workman against the management leading to this reference has been duly satisfied. There is now no dispute between the workman and management. No order as to costs. This be read in answer of the reference.

Dated the 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 247, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, with the request that the receipt of the award may be acknowledged within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad

No. 9(1)81-8Lab./1466.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Jan Hirdya Saptahik Samachar Patra and Prodh Siksha Parijojna Centre Opp. Bus Stand, Rewari.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT,
HARYANA, FARIDABAD.

Reference No. 3 of 1981

between

SHRI LAXMI NARAIN SHARMA,
WORKMAN AND THE MANAGEMENT OF M/S JAN HIRDYA SAPTAHIK SAMACHAR PATRA AND

PRODH SIKSHA PARIJOJNA CENTRE, OPP. BUS STAND, REWARI.

Present:—

None, for the parties.

AWARD

This reference No. 3 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/SGH/12/80/65012, dated 24th December, 1980, for adjudication of the dispute existing between Shri Laxmi Narain Sharma, workman and the management of M/s Jan Hirdya Saptahik Samachar, Patra and Prodh Siksha Pariyojna Centre, Opp. Bus Stand, Rewari under section 10(i)(c) of the Industrial Disputes Act. The term of the reference was:—

Whether the termination of services of Shri Laxmi Narain Sharma, was justified and in order. If not, to what relief is he entitled ?

After receiving this reference notices were sent to the parties for 23rd January, 1981, but both the notices were received back with the remarks of the postal authorities that no such person and firm existed on the address given on the registered envelope. The notices were sent by this court on the addresses given in the reference. This court has no other address except the address given in the reference. In these circumstances, I hold that the reference made by the Government is bad in law as no such person and firm exist on the addresses given in the order of reference.

This be read in answer to this reference.

Dated the 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,

Labour Court, Haryana, Faridabad.
Endorsement No. 248, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act with the request that the receipt of the above said award may please sent to this court within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad

No. 9(1)81-8Lab./1467.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s Kuldeep Hotel, Sohna Road, Gurgaon.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.
Reference No. 279 of 1980.

between

SHRI OM PARKASH, WORKMAN AND THE MANAGEMENT OF M/S KULDEEP HOTEL, SOHNA BUS STOP, GURGAON.

Present:—

None, for the workman.

Shri S. K. Koswami along with Shri Kuldeep Singh, respondent in person.

AWARD

This reference No. 279 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/54-79/34690, dated 26th June, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Om Parkash, workman and the management of M/s Kuldeep Hotel, Sohna Bus Stop, Gurgaon. The term of the reference was:—

Whether the termination of services of Shri Om Parkash was justified and in order ? If not to what relief is he entitled ?

After receiving the order of reference, notices were sent to both the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, issues were framed by me on 27th November, 1980, and the case was fixed for evidence of the workman for 11th December, 1980. On 11th December, 1980, the undersigned was on leave and after getting two or three adjournment when the case was fixed for 9th January, 1981, none was present from the side of the workman. I waited up to 1.30 p.m. and proceeded *ex parte* against the workman. Then the case was fixed for

recording of *ex parte* evidence of the management for 23rd January, 1981.

On 23rd January, 1981, *ex parte* evidence of the management was recorded. Shri Kuldeep Singh, respondent in person appeared, who stated that he was running a hotel named and styled as M/s Kuldeep Hotel, Gurgaon and he was the proprietor of the hotel. He further stated that he never employed Shri Om Parkash in his hotel. He stated that he, his father and his brother did the work of hotel with their own hand. The demand raised by the workman Shri Om Parkash was baseless and wrong. He further stated that as he may never employed Shri Om Parkash in his hotel, so the question of termination of service of the said workman did not arise and prayed that his case be filed.

In view of the unrebutted *ex parte* evidence produced by the management, I am left with no choice except to believe the version of the management. Over and above this my finding gets support from the absenting of the workman in the proceedings in this court in this reference. I hold that the reference was made by the government on the wrong management and therefore the reference is bad in law, and the workman is not entitled to any relief.

This be read in answer to this reference.

Dated the 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

Endorsement No. 249, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that acknowledgement of the award may please be sent to this court within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab./1471.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act

No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the management of M/s R.K.G. Pharma Pvt. Ltd., Mathura Road, Faridabad.

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY, PRESIDING OFFICER, LABOUR COURT, HARYANA, FARIDABAD.

Reference No. 27 of 1980.

between

SHRIMATI KAMLA RANI, WORKMAN AND THE MANAGEMENT OF M/S R.K.G. PAHRMA PVT. LTD., MATHURA ROAD, FARIDABAD.

Present:—

Shri Yoginder Singh, for the workman.

Shri D. C. Bhardwaj, for the respondent management.

AWARD

This reference No. 27 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—*vide* his order No. ID/FD/250-79/502, dated 10th January, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shrimati Kamla Rani, workman and the management of M/s R.K.G. Pharma Pvt. Ltd., Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shrimati Kamla Rani, was justified and in order ? If not, to what relief is she entitled ?

After receiving this reference notices were sent to both the parties, who appeared in the court. The facts of this case are as under:—

The workman claimant raised a demand under section 2(a) of the Industrial Disputes Act, 1947, on the respondent management saying that she was working in the despatch department of the respondent company since 24th November, 1976, peacefully and efficiently. On 7th January, 1979, the Technical Director of the company misbehaved with her and over and above this gave a warning letter also to her, which was replied on 10th January, 1979. She states that she

was threatened to be suspended. On 16th January, 1979, she was actually suspended after being threatened of suspension, because she had given her explanations. She was not paid her suspension allowance which she demanded on 21st April, 1979 and she informed the labour department, about it.

On 17th April, 1979, the respondent gave 23rd April 1979 as a date for domestic enquiry which the respondent did not conduct. On 22nd April, 1979 she demanded some facilities so that the domestic enquiry could proceed peacefully, but still not sitting of the enquiry were held on 30th April 1979 and 9th May, 1979. On 28th June, 1979, the domestic enquiry was held but the same was not held on 6/79. At last the enquiry proceedings were held 28th June, 1979 and concluded on 24th July, 1979. On 10th July, 1979, she was removed from service illegally, because she was not supplied the copies of findings of the enquiry. On 15th May, 1979 she prayed for supply of report of findings which were not supplied to her. This action of the respondent is based on anti-workman policy and with a view to revenge because she was participating in trade union activites. This policy is illegal and against the principles of Natural justice of the respondent.

She demanded that she should be reinstated forthwith with continuity of her old service and full back wages, otherwise the management should face litigation and they would be liable for all costs and expenses. A copy of this demand notice was sent to the Labour cum Conciliation Officer, Faridabad. She has alleged that no domestic enquiry was held of the charges against her, nor was she supplied the copies of findings of domestic enquiry. Her representative did not want to file any claim statement and wanted the demand notice to be treated as her claim statement.

The management filed its written statement controverting the allegations of the claimant workman. The respondent said that a proper fair and legal domestic enquiry was held and all facilities legally admissible were given to her. She was

even allowed being represented by Shri Mohan Lal, General Secretary of C.I.T.U. Union who fully participated in it, and she and Mohan Lal cross examined the management witnesses and adduced defence also. They signed the proceeding of the enquiry and the enquiry found her guilty of the charges and that was the base on which management dismissed her.

The charges against her were of misbehaving with the Technical Director of respondent company. She received her allowances for suspension period and she was given copies of proceedings in which she participated with her representative, on each days of its conclusion.

On 15th April, 1980 rejoinder was filed by the workman Kamla Rani in which she controverted the contents of the written statement and re-affirmed the contents of her demand notice which on her request was treated as her claim statement. In it she admits holding of domestic enquiry but the same according to her was not fair. According to rejoinder injustice was done to her and she was not allowed facilities she was entitled to, like copy of list of witnesses of the management. She further in rejoinder admits that she got the list of witnesses but all the names of witnesses were not mentioned of those whose statement were recorded.

With the above proceedings the following issues were framed:—

1. Whether the enquiry held by the management was proper and valid ? (OPM)
2. Whether the termination of services of the workman was justified and in order ? If not to what relief is she entitled ?

ISSUE NO. 1:

Issue No. 1 was ordered to be treated as preliminary issue. Both the parties produced one witness each i.e. Shri D. C. Bhardwaj, enquiry officer from the respondent management side and she herself appeared as her own witness, and closed their case. Admission and denial of documents filed was also done before recording of evidence.

On 15th January, 1981 arguments were heard. My findings are as under:—

ISSUE NO. 1:

This issue is on the vires of the enquiry held by the management which was ordered to be treated as preliminary issue. Shri D. C. Bhardwaj, Labour Law advisor was appointed as enquiry officer who made his statement on oath. According to him this worker Kamla Rani was charge-sheeted by the respondent on 9th January, 1979. Photo copy of it is Ex. M-1 which was based on Ex. M-2 a photo copy of written complaint made by Shri O. P. Sharma, Technical Director of the respondent company. The worker Kamla Rani replied Ex. M-1 through Ex. M-3 a photo copy. She was put under suspension and one Shri S. S. Gupta was initially appointed as enquiry officer, though Ex. M-4. Initially she did not join the domestic enquiry despite notice for 4/5 months, through letter and telegrammes. The copy of telegrammes are Ex. M-5 and Ex. M-6. On 22nd June, 1979. Shri Bhardwaj was appointed enquiry officer through Ex. M-7, before the Labour cum Conciliation Officer and was accepted by the workman Kamla Rani. It was also agreed before the Labour cum Conciliation Officer that Shri Mohan Lal, General Secretary CITU union will assist and represent her in enquiry, who participated in it till end. He gave all facilities to the worker Kamla Rani in the domestic enquiry and found her guilty of the charges and submitted enquiry report to respondent Ex. M-8. She was dismissed through Ex. M-9 by the respondents.

The workman Kamla Rani in her statement says that she worked in Capsule filing section. On 7th January, 1979 Technical director of respondent company misbehaved with her in the after noon when she was all alone. She complained in writing against this to the proprietor of respondent company who gave her chargesheet in return Ex. W-1 which she replied through Ex. M-2. She was suspended through Ex. W-3. She says that on 28th April, 1979, she was called from her house and her signatures on some papers written and blank were obtained under duress. She admits holding of domestic enquiry in

which she demanded some facilities through Ex. W-4 which was replied by the management through Ex. W-5. She protested for obtaining her signatures under duress through Ex. W-6. Ex. W-7 is the copy of demand notice.

Now this all seems to be a case where the workman Kamla Rani has changed her version and story totally. She says in the demand notice Ex. W-7 that she worked in despatch section where as in her statement on oath before me, says that she worked in capsule filling section. She has no where mentioned in her demand notice that she was filthily misbehaved on 7th January, 1979, by She Sharma, Technical Director in capsule section when she was all alone there in the after noon. She says that she made a complaint through Ex. W-6 to the proprietor for this mis-behaviour of Shri Sharma. The Ex. W-6 does not contain a single word of any mis-behaviour or of complaint but it about facilities and enquiry officer only. She in her demand notice has no where mentioned that her signatures were obtained under duress on some written and blank papers, where as she says so in her statement in court. She in her statement admits that Shri S. S. Gupta was appointed enquiry officer in the first instance who was charged on her own request and Shri Bhardwaj MW-1 was appointed enquiry Officer. She denies her signatures on Ex. M-7 but one with bare eye can tally them with her admitted signatures of W-7 demand notice and they tally with each other. She admits having signed many pages of enquiry, but not all that means she participated in it. She withdrew why she knows. On these admitted pages signatures of Shri Mohan Lal are also present. How can she refuse Mohan Lal to be her representative. He is General Secretary of the CITU union and she admits that she was represented by CITU then it is dis-believable that she did not know Mohan Lal. She says that she did not lodge any complaint with the police or labour department for obtaining her signatures under duress on written and blank papers nor about misbehaviour of Shri Sharma. She admits that she collected her suspension allowance from the factory.

Shri Bhardwaj, enquiry Officer has proved the enquiry proceedings giving of facilities she was legally entitled to get. He deposes on oath that Mohan Lal, who representing her is General Secretary of CITU union. She was charged for misbehaving not with a supervisor or a little higher officer, but with the technical director of the respondent company. Even the statement of workman corroborates the statement of Shri Bhardwaj MW-1.

I think that from the above discussion it is clear that a proper and fair enquiry was held and I decide this issue in favour of the management and against the workman Kamla Rani.

ISSUE NO. 2:

This issue is about her termination whether it is based on justice and is in order. I agree that she has been held guilty by a fair and proper enquiry, but I feel that she has been dismissed which is too harsh a punishment, as she is a girl. She should not be dismissed but treated as terminated instead and for that termination she should be paid her dues as a terminated workman should get from the management. This be read in answer of this reference. No order as to costs.

Dated the 30th January, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,

Labour Court, Haryana, Faridabad.

Endorsement No. 250, dated 30th January, 1981.

Forwarded, (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that receipt of same may please be sent to this court within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana, Faridabad.

No. 9(1)81-8Lab/1714.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Alfamet Pvt. Ltd., Sector 24, Faridabad.

88

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD
Reference No. 201 of 1980

between

SHRI RAM SARIKA PARSHAD WORKMAN AND THE MANAGEMENT OF
M/s. ALFAMET PRIVATE LTD,
SECTOR-24, FARIDABAD.

Present:

Shri Darshan Singh, for the workman.

Shri R. Sibal, for the Management.

AWARD

This reference No. 201 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/31-80/14636 dated 21st March, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Ram Sarika Parshad workman and the management of M/s. Alfamet Private Ltd., Sector-24, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Ram Sarika Parshad was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties. Both the parties appeared, but on 2nd February, 1981 the date fixed in the case, the representative for the workman stated that he has no instructions from the workman and he did not want to proceed further in the case. I, therefore, give my award that there is no dispute between the parties at present as the representative for the workman did not want to proceed further with the case. No order as to costs. So this award is in answer of this reference.

The 4th February, 1981

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 326, dated the 10th February, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under

Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/1753.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Rajdhani Electrics Private Ltd. Plot No. 47, Sector 6, Faridabad.

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD.
Reference No. 551 of 1980
between

SHRI BIR SINGH WORKMAN AND
THE MANAGEMENT OF M/s. RAJDHANI ELECTRICS PVT. LTD., PLOT
NO. 47, SECTOR 6, FARIDABAD.

Present:

None for the workman.

Shri R. C. Sharma, for the Management.

AWARD

This reference No. 551 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/128-80/60047, dated 15th December, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Bir Singh workman and the management of M/s. Rajdhani Electrics Private Ltd. Plot No. 47, Sector-6, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Bir Singh was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties for 28th January, 1981. On that day, the representative of the management was present but neither the workman nor his

authorised representative was present, when the service of the notice had already been effected on the workman. The case was called thrice and this court proceeded *ex parte* against the workman. Then the case was fixed for the *ex parte* evidence of the management for 3rd February, 1981.

On 3rd February, 1981 the management examined Shri R. C. Sharma as MW-1. He stated in this court that the workman had settled his dispute with the management and also received his full and final accounts. He also filed a copy of settlement which is Exhibit M-1. He further stated that there is now no dispute between the parties.

In the above circumstances the unrebuked statement of the management is relied upon and I hold that the workman had settled his dispute with the management. I, therefore, give my award that there is no dispute between the parties at present. No order as to costs. So this award is in answer of this reference.

The 5th February, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 336, dated the 10th February, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/1755.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/s. Rajdhani Electrics Private Ltd., Plot No. 47, Sector-6, Faridabad.

IN THE COURT OF
 SHRI ISHWAR PRASAD CHAUDHRY,
 PRESIDING OFFICER,
 LABOUR COURT,
 HARYANA, FARIDABAD.
 Reference No. 565 of 1980
 between

SHRI NEGU RAM CHAUHAN, WORK-
 MAN AND THE MANAGEMENT OF
 M/S. RAJDHANI ELECTRICS PVT.
 LTD., PLOT NO. 47, SECTOR 6,
 FARIDABAD.

Present:

None for the workman.

Shri R. C. Sharma, for the management.

AWARD

This reference No. 565 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/129-80/60180, dated 15th December, 1980, under section 10(i)(c) of the Industrial Disputes Act 1947, for adjudication of the dispute existing between Shri Negu Ram Chauhan and the management of M/s. Rajdhani Electrics Private Ltd., Plot No. 47, Sector 6, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Negu Ram Chauhan was justified and in order? If not, to what relief is he entitled?

On receipt of the order of reference, notices were sent to the parties for 28th January, 1981. On that day, the representative of the management was present but neither the workman nor his authorised representative was present, when the service of the notice had already been effected on the workman. The case was called thrice and this court proceeded *ex parte* against the workman. Then the case was fixed for the *ex parte* evidence of the management for 3rd February, 1981.

On 3rd February, 1981, the management examined Shri R. C. Sharma as MW-1. He stated in this court that the workman had settled his dispute with the management and also received his full and final accounts. He also filed a copy of settlement which is Exhibit M-1. He further stated that there is now no dispute between the parties.

In the above circumstances the unrebutted statement of the management

is relied upon and I hold that the workman had settled his dispute with the management. I, therefore, give my award that there is no dispute between the parties at present. No order as to costs. So this award is in answer of this reference.

ISHWAR PRASAD CHAUDHRY,
 Dated the 5th February, 1981.
 Presiding Officer,
 Labour Court, Haryana,
 Faridabad.

Endorsement No. 337, dated the 10th February, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above-said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
 Presiding Officer,
 Labour Court, Haryana,
 Faridabad.

No. 9(1)81-8Lab/1768.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workmen and the management of M/s. Surinder Enterprises, Dalwa Poli Road, Feroze Gandhi Nagar, NIT, Faridabad.

IN THE COURT OF
 SHRI ISHWAR PRASAD CHAUDHRY,
 PRESIDING OFFICER,
 LABOUR COURT,
 HARYANA, FARIDABAD.
 Reference No. 555 of 1980

between
 SHRI HUKAM CHAND WORKMAN
 AND THE MANAGEMENT OF M/S.
 SURINDER ENTERPRISES, DALWA
 POLI ROAD, FEROZE GANDHI NAGAR,
 NIT, FARIDABAD.

Present:

Shri R. L. Sharma, for the workman.
 Shri R. S. Arora, for the management.

AWARD

This reference No. 555 of 1980 has been referred to this court by Hon'ble Governor Governor of Haryana,—vide his order No. ID/FD/136-80/60071, dated 15th December, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Hukam Chand, workman and the management of M/s Surinder Enterprises, Dalwa Poli Road Feroze Gandhi Nagar, NIT, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Hukam Chand was justified and in order ? If not, to what relief is he entitled ?

On receipt of the order of reference, notices were sent to the parties. Both the parties appeared, but on 3rd February, 1981 the date fixed in the case, the representative for the workman stated that he has no instructions from the workman and he did not want to proceed further in the case. I, therefore, give my award that there is no dispute between the parties at present as the representative for the workman did not want to proceed further with the case. No order as to costs. So this award is in answer of this reference.

ISHWAR PRASAD CHAUDHRY,
Dated the 4th February, 1981.

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 325, dated the 10th February, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the above said award may please be acknowledged within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

The 20th April, 1981

No. 9(1)81-8Lab/3913/4.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court,

Faridabad, in respect of the dispute between the workmen and the management of M/s Bharat Carpets Ltd., Industrial Area, Amar Nagar, Faridabad.

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD.
Reference No. 144 of 1980
between

SHRI AMAR NATH, WORKMAN AND
THE MANAGEMENT OF M/S BHARAT
CARPETS LTD INDUSTRIAL AREA,
AMAR NAGAR, FARIDABAD

Present:

Shri K. R. R. Pillay, for the workman.
Shri S. K. Sharma, for the respondent management.

AWARD

This reference No. 144 of 1980 has been referred to this court by Hon'ble Governor of Haryana,—vide his order No. ID/FD-30-80/10493, dated 27th February, 1980 under section 10(i)(c) of the Industrial Dispute Act, 1947, for adjudication of the dispute existing between Shri Amar Nath, workman and the management of M/s Bharat Carpets Ltd., Industrial Area, Amar Nagar, Faridabad. The term of the reference was :—

Whether the termination of services of Shri Amar Nath was justified and in order ? If not, to what relief is he entitled ?

After receiving the reference, notices were sent to both the parties, who appeared and filed their pleadings. On the pleadings of the parties, following issues are framed :—

- (1) Whether the present reference is not maintainable in this court for its being immature? If not, to what effect?
- (2) Whether proper enquiry was held before terminating the services of the workman?
- (3) Whether the termination of the services of the workman is proper, justified and in order? If not, to what relief is he entitled?
- (4) Whether the workman is gainfully employed? If so, to what effect?
- (5) Relief.

Issue No. 1 and 2 were ordered to be treated as preliminary issues and the parties were ordered to adduce their evidence on these two issues which the parties did.

ISSUE NO. 1:

This issue is about the maintainability of the reference order. This issue is arising out of the para No. 1 of the management's written statement which *inter alia* contends that the present reference order is based on demand notice dated 15th January, 1980, whereas there was no termination as such on that date because the disciplinary proceedings were pending against the workman and the domestic enquiry was in process and the present reference being premature is not legally maintainable. In his rejoinder the concerned workman while repelling the contentions of the management, pleaded that he reported for duty which was on 1st September, 1979, but the management did not take him on duty and he reported the matter to the Deputy Labour Commissioner, who made continued efforts till January, 1980 and thereafter the workman raised the demand notice on 15th January, 1980.

The management examined Shri Lalit Mohan Joshi, as MW-1 who proved certain documents relating to charge-sheet, enquiry proceedings which were pending and the dismissal order which is Exhibit 22. Exhibit M-22 is dated 26th February, 1980. The workman examined himself as his own witness.

It was argued on behalf of the management, that since there was no cause of action accruing to the claimant workman Shri Amar Nath on the date of raising demand because he was on the roll of the company on that date and the enquiry proceedings were still pending and he was dismissed only on 26th February, 1980. From the side of the workman it was argued that he had been impliedly removed from the service on 28th July 1979, i.e., the date his gate entry was closed. Impliedly the termination should be treated having been started from 28th July, 1979. However, after the oral arguments the representative of the workman sent written arguments which I think I should make part of this file. In the written arguments about this issue from the side of the workman a somewhat different stand has

been taken pertaining to the raising of demand and defining the term "Termination". The representative of the workman relied upon the following decisions:—

- (1) State Bank Vs. N. S. Mani 1976 ([3 SCR-160]).
- (2) R. B. Secretary of State [1973 (2 ALL. SER 101)].
- (3) Shambho Nath vs. Bank of Baroda (AIR-1978-SC-1988)

The representative of the workman did not show the citation quoted by him, but however, I had the opportunity to go through these pronouncements with utmost respect to their Lordships. I am afraid these citations have got no bearing as far as the point at issue is concerned in the present matter.

The reference order of the case was signed by the authority so authorised to do on 27th February, 1980. The dismissal order Exhibit M-22 is dated 26th February, 1980, which is certainly in earlier date than the order of the reference. Section 10 of the Industrial Disputes Act, 1947, clearly envisages even when there is an apprehension of industrial disputes, reference can certainly be made and the State Government is fully empowered and competent to make the reference order. On the other hand the management had nowhere challenged the date of dismissal of the workman and the date of the reference. Nor they have challenged the competence of the State Government in making this reference to this court. I think that before deciding this point, I should actually see whether there was any apprehension of an industrial dispute or there existed actually an industrial dispute between the parties. In the present case what to speak of apprehension of a dispute the dispute had already existed on 26th February, 1980, when this workman was dismissed by the management and the reference order is of a later date than 26th February, 1980. I can agree to some extent with the contention of the representative of the management, that the demand was raised on 15th January, 1980 but he had no reply to the question that the reference had been made after dismissal.

After having discussed issue No. 1 in the above lines, I find no force in the arguments of the representative of the management and hold that this reference is quite

in order and valid, and is legally maintainable and I have complete jurisdiction to try this dispute. Therefore, I hold this issue against the management and in favour of the workman, Shri Amar Nath.

ISSUE NO. 2:

This issue is about the vires of the domestic enquiry held by the management. On this issue the workman has, in his demand notice, uttered not a word about the domestic enquiry but has stated that he was refused entry on the gate. Even in his rejoinder he has denied the fact of enquiry being held by stating that no charge-sheet was issued or domestic enquiry was held.

In spite of the fact that the management in their written statement has contended that in the month of June, 1979, the workmen of few departments had resorted to go-slow tactics and in pursuance of that motivation in mind the concerned workman along with five other co-workmen assaulted one other workman Shri Lekh Ram, on 28th July, 1979; and after making an assault he started remaining absent in an unauthorised manner: charge-sheet was issued, the subject of which was also got published in local newspaper Shere Haryana in Hindi published from Faridabad; several communications were sent at the local and permanent addresses of the workman; a fair and proper enquiry was held after providing various opportunities to the workman; the enquiry officer held the workman guilty of the charges levelled against him; the provisions of the certified standing orders were fully complied with and therefore, he was dismissed in a justified and lawful manner.

From the side of the management, Shri Lalit Mohan Joshi, Administrative Manager, and Shri K. K. Karoli, advocate, Gaziabad, appeared and deposed before me on oath. MW-1 L. M. Joshi deposed that the workman of the respondent's company in June, 1979, started a go-slow movement. This workman Amar Nath was in Spinning Department. Those workmen who did not toe with the lines of go-slow were threatened with dire consequences by six workmen out of which the concerned was one. These six workmen beat one Shri Lekh Ram, such as a willing worker along with others and reached the factory gate running where they beat the Security

incharge, one Mr. Naithani. And then they absented from the factory, out of these six workmen, three came to the factory after 20—25 days. Their names are Hirdey Narain, Bhola Nath and Manehi. In consequences of this incident all these six workmen were charge-sheeted and charge-sheets were sent to them through Registered A.D. Covers at their addresses which were received back undelivered to the management with the remarks of the postal authorities "Refused", in the case of Amar Nath, workman. These charge-sheets were sent at their permanent and local addresses. The three workmen who had reported at the gate of the factory received their charge-sheet by hand. Shri K. K. Karoli, MW-2, was appointed Enquiry Officer to hold domestic enquiry. He summoned these workmen through Registered A.D. letters sent at their local and permanent addresses. Newspapers insertions were also given by the respondent management and the enquiry officer for holding of this enquiry in a local Hindi language paper of Faridabad, but no heed was paid even to the newspaper insertions. MW-2, the enquiry officer held the domestic enquiry, recorded evidence, accepted documents and gave his reports to the respondent after its conclusions. According to his report based on the evidence, adduced before me, and record produced during the enquiry, he found Amar Nath guilty of the charges levelled against him by the respondent i.e., gross misconduct.

In return the workman Shri Amar Nath stated on oath that no charge-sheet was ever given to him by the respondent management. His gate entry was stopped. He was neither informed of any enquiry being held against him nor was such an enquiry held by the respondent against him. He has in his statement further admitted his addresses to be correct and same as had been given on the letters sent to him by the respondent management.

It has come in the evidence of the management that for this assault an F.I.R. Exhibit M-8 was also lodged with the local police against this workman. It has also come that Shri Lekh Ram, the assaulted workman, had received injuries, to the tune of grievous hurts. Intimation of this enquiry sent at this admitted address is Exhibit M-11 which were refused by this

workman. The publication through newspaper are Exhibit M-13 and M-16 from the side of the management and an enquiry officer respectively. Some of the workers requested for change of the venue of the enquiry from Delhi to the factory of the respondent Faridabad, the request was also exceeded to by the respondent. The proceedings of the enquiry are Exhibit M-20 which continued from 20th September, 1979 to 21st November, 1979. The report of the enquiry officer is Exhibit M-21. These facts have fully been corroborated by both the witnesses of the management i.e. its Administrative Manager and the enquiry officer. These witnesses were put to quite hard, lengthy and strenuous cross examination but from the workman side, no crack could be made in the stand taken by the management witnesses. They have fully substantiated the charges against this workman and corroborated through and through each other.

The workman also appeared as his own and solitary witness in his defence and has only contended in denying the holding of any domestic enquiry against him by the respondent. He has nowhere produced a single more witness to corroborate this contention or produced any documents to falsify the stand taken by the management. It is a broad principles of law that mere denial of the fact without substantiating the same with corroborative evidence, oral or documentary is merely a denial of the fact and nothing more. No credence can be attached to such a denial.

At the time of the arguments, from the side of the workman, nothing much worth appreciating has been advanced before this court. So much so, the representative of the workman did not want to touch and argue to this delicate and an important issue of enquiry which is evident from his remarks at page 6 of the written arguments submitted in this court which reads as under:—

“Hence the whole enquiry proceedings are irrelevant in the present dispute.”

It appears that the representative of the workman had no case on this issue and he has been shaky in his arguments on this issue which can be substantiated

while going through the written arguments at page 7 where he has stated as under:—

94

“Hence the second issue viz. the vires of the enquiry do not arise at this stage. The workman does not want to make any submission on the 2nd issue because it may prejudice his case, when it is raised again through appropriate proceedings.”

It seems that the representative of the workman had virtually opted to concede this issue against the workman with mis-conceived notion and await for certain other proceedings to occur. It is quite astonishing that an issue has been framed upon which both the parties led evidence but at the time of the arguments the representative of the workman is looking at such other proceeding to occur, in vacuum, when he had an ample opportunity to elaborate and argued the point at issue.

The representative of the management has argued before me that the management made all efforts to make the communication complete but on account of deliberate evading of the workman the letters were returned undelivered with the remarks by the postal authorities, he has stressed upon the fact that the management did not leave any stone unturned to provide an opportunity to the workman to attend the domestic enquiry to defend himself to enable him to wove his innosense. The workman concerned has admitted his addresses to be the same and correct on which the communication were sent when confronted with the documents of communication during the course of evidence. He has drawn my attention towards clause II-C of the certified standing orders applicable in the respondents company wherein it is a patent condition that whenever any worker changed his address he was bound to intimate the same to the respondent, otherwise it will be presumed that no change of address took place. The concerned workman had admitted in his cross examination that he had never informed the respondent of the change of his address. Rather he had been living at the same address. The management’s

representative further argued that he had produced, voluminous documents which cannot be made overnight and are not liable to be ignored. He says that not only the communication were sent at the recorded addresses but the information were also got published in the local papers in the regional language. In support of this contention the representative of the respondent management has cited the case decided by their Lordships in Bata Shoe Company Private Ltd., Vs. D. N. Gangoli reported in 1961 FLR (Vol. 2 page 183). In this case their Lordships of the Supreme Court were pleased to hold that in case the letters sent to the workman returned undelivered the management have to get them published in some local newspaper in the regional language and that will be deemed to be an effective service on the addressee, and the same is a fact in this case. The representative of the management had argued that in case the workman is not willing to participate in the enquiry the same can be proceeded *ex parte*. He has relief upon the following citations:—

1. M/s. Laxmi Devi Sugar Mills Ltd. Vs. Pandit Ram Saroor (1957) (LLJ-page 17) (SC-FB 5-Judges).
2. Brooke Bond India Pvt. Ltd. Vs. S. Subbataman-1961-62-FJR- Vol. XX Page 424 S.C. (D.B.)

Having discussed this issue in details in the above lines I am left with no choice except to agree with the contention of the representative of the management. Moreover, I am in agreement that the representative of the managements gets force with the guidelines, observation and principles laid down by their Lordships of the highest court of the land. Under these circumstances, I decide this issue in favour of the management and against the workman. I hold that the domestic enquiry, held by the management, was quite proper, fair justified and in order. It was certainly based on principles of natural justice.

The charges against the workman are of very serious and grave nature and, therefore, I hold that the punishment awarded to the workman is quite proportionate to mis-conduct established against him.

In view of the findings on issue Nos. 1 and 2 the decision of the remaining issues need no trial. With this I give my award that the workman is not entitled to any relief and that the termination of the services of the workman is legal, justified and in order. This be read in answer to this reference. No order as to costs. The 24th February, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 499, dated the 2nd March, 1981.

Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh, as required under Section 15 of the Industrial Disputes Act, 1947, with the request that the receipt of the award may please be sent to this court.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/391315.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Crystic Resins (India) Pvt. Ltd., Mathura Road, Faridabad:—

IN THE COURT SHRI ISHWAR
PRASAD CHAUDHRY
PRESIDING OFFICER
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 64 of 1979
between

SHRI DALBIR SINGH, WORKMAN
AND THE MANAGEMENT OF
M/S CRYSTIC RESINS (INDIA)
PRIVATE LIMITED,
MATHURA ROAD,
FARIDABAD

Present:

Shri Amar Singh Sharma for the workman.
Shri K. P. Aggarwal for the respondent-management.

AWARD

This reference No. 64 of 1979 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/195-79/51818, dated 7th December, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Dalbir Singh and the management of M/s Crystic Resins (India) Private Ltd., Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Dalbir Singh was justified and in order? If not, to what relief is he entitled?

After receiving this reference notices were sent to the parties, who appeared and filed their pleadings. On the pleadings of the parties, following issues were framed:—

- (1) Whether the workman abandoned his services at his own? If so, to what effect?
- (2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

Both the parties adduced their evidence. The management examined MW-1 Shri Krishan Narain, Time-office-incharge and also filed their documents Exhibit M-1 to M-11, where as the worker made his own statement and has produced two documents, Exhibit W-1 and W-2.

The case of the management is that worker Shri Dalbir Singh remained absent from his duties, with effect from 9th July, 1979 without any sanction of leave and permission and that his name was struck off from the rolls of the company, with effect from 20th July, 1979 as per clause 16(4) of the Model Standing Orders applicable to them. They alleged that during this un-authorised absence the workman never sent any leave application nor a medical certificate. Further more they state that they wrote two letters one, dated 13th July, 1979 asking him that he was absenting from duty and advised him to report for duty immediately. This letter is Exhibit M-2. The other letter is dated 20th July, 1979 wherein they have

informed the workman that his name had been struck off the rolls of the company for his long absences, with effect from 19th July, 1979. They have stated further that the worker was on lay-off in the company from 2nd July, 1979 to 7th July, 1979 and there of he remained absent from 9th July, 1979, 8th July, 1979 being the holiday.

On the other hand the contention of the workman is that he was on lay-off from 2nd July, 1979 to 29th July, 1979 and he was refused duty on 30th July, 1979. He has produced W-2 which is admittedly his attendance card issued by the respondent. The worker has also denied the suggestion that he was absent from 9th July, 1979. He rather volunteered to say that the lay-off was continuing. He also denied, having received Exhibit M-1 and M-2. He admitted that except him everyone had been taken back on duty after the lifting of lay-off.

The management is solitary witness MW-1 has admitted in his cross-examination that Exhibit W-2 the attendance card of this workman bears the entries either in his hand or of his assistant from 1st July, 1979 to 7th July, 1979 and denied the knowledge of entries on it after 7th July, 1979. He has also admitted that no information for lifting of lay-off was displayed or sent to the workers or to the authorities. The management has not produced any documentary evidence to show that the lay-off which was effected with effect from 2nd July, 1979 was actually lifted on 7th July, 1979. The management has also failed to produce any document to show that the lay-off was a day-to-day matter or that it was declared for a specific period. A perusal of Exhibit M-10, viz., a copy of the statements filed before the conciliation proceedings clearly indicates that there is nothing on record regarding the lifting of the lay-off. It will also show that the demand notice of the workman is, dated 31st July, 1979 one day after he was not allowed to do his duty.

The worker has relied upon Exhibit W-2 wherein he has been shown to be on lay-off from 2nd July, 1979 to 29th July, 1979 however the entries pertaining to 1st July, 1979 to 7th July, 1979 have been

accepted by the respondent to be theirs but the rest of them have been denied. Strongly enough they have in the cross-examination of the worker have never asked him anything regarding the entries on W-2 from 9th July, 1979 to 29th July, 1979, which clearly indicates that they accept the version of the worker that the entries were made by the despondents management, nor is there any suggestion to the workman that these entries on Exhibit W-2 were got made by the worker later on or he made them by himself.

Relying on this documents I hold that the workman was kept on lay-off up to 29th July, 1979 as he has affirmed in his own statement.

The management representative has cited two cases 1963-64 FJR Volume 25, page 25 and 1977 FLR, Volume 34, page 261. In view of my findings that the worker was on lay-off till 29th July, 1979 these rulings do not help the management as there could not be any termination on 19th July, 1979 when the worker was actually on lay-off up to 29th July, 1979.

I, therefore, hold that the termination of services of the workman Shri Dalbir Singh is neither proper nor justified in law. As the workman remained unemployed during the period of his wrongful termination, I therefore, hold that he is entitled to his full back wages and direct the worker Dalbir Singh that he should be reinstated with continuity of his service and full back wages. This be read in answer to this reference. No order as to costs.

The 24th February, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 497, dated 2nd March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947, with the request that receipt of the award may please be sent to this court within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/391316.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s Northern Steel Company, Mathura Road, Faridabad:—

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD

Reference No. 81 of 1980

between

SHRI RAJINDER MOHAN, WORKMAN
AND THE MANAGEMENT OF M/S
NORTHERN STEEL COMPANY, 20/3,
MATHURA ROAD, FARIDABAD

Present:

Shri Yoginder Singh for the workman.
Rao Surinder Singh for the respondent-management.

AWARD

This reference No. 81 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order, No. ID/FD/10-80/9797, dated 25th February, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri Rajinder Mohan, workman and the management of M/s Northern Steel Company, Mathura Road, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Rajinder Mohan was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were sent to both the parties. The parties appeared and filed their pleadings. On the pleadings of the parties, following issues were framed:—

- (1) Whether the workman abandoned the services of the management respondent of his own accord? If so, to what effect? (OPM)

(2) Whether the termination of services of the workman is proper, justified and in order? If not, to what relief is he entitled?

(3) Relief?

Both the parties lead their evidence on these issues. My findings issuewise are as under:—

ISSUE No. 1:

The management produced MW-1 Shri S. P. Sharma its Head Time Keeper as its solitary witness and closed its case. The workman appeared as WW-1 as his own witness and closed his case.

MW-1 states that he knew the claimant workman, who was appointed as tongman through M-1 the appointment letter. The workman received it after putting his signatures. The designation has not been disputed by the parties. The workman has denied his signatures on receipt and Exhibit M-1. I have compared the signatures of the worker with his admitted signatures on his authority letter and they fully tally with each other. MW-1 says that according to attendance register, which he had brought the worker Shri Rajinder Mohan absented himself from duty from 24th October, 1979 to 12th November, 1979, without information and, therefore, according to Model Standing Orders applicable in the respondent company, the name of the workman was struck-off the rolls of the company for long absence. Before this two letters, Exhibit M-2 and M-3 were sent to the workman through registered cover. Exhibit M-2/1 and M-2/2, the postal receipts of which are Exhibit M-3/1 and M-3/2. In these letters the worker was asked by the management to report for duty but he did not do so. Then after striking off the name of the workman, Exhibit M-4 was sent to him by the management, informing him the striking off his name from its rolls, under Registered A.D. cover. Exhibit M-4 intimation was sent to the worker on his local address of Faridabad and his home address of his village.

The workman in return says that he was on leave on 22nd October, 1979 and then on 23rd October, 1979 he was present on duty. He suddenly took ill on 24th

a medical certificate through a co-worker for leave up to 1st November, 1979 and again joined his duty on 2nd November, 1979, after furnishing a fitness certificate. 3rd and 4th November, 1979 were holidays and he was again taken ill on 5th November, 1979 and the same day sent a medical certificate from 5th November, 1979 to 15th November, 1979 through registered letter. The photo copy of that certificate is Exhibit W-1 and Exhibit W-2 and postal receipt is Exhibit W-2/A. Then he says he sent another medical certificate through registered cover the postal envelope of which is Exhibit W-3 and remained absent up to 27th November, 1979. On 28th November, 1979 reported for duty with fitness certificate, but was refused by the management to resume his duty. The postal receipt of Exhibit W-3 envelope is Exhibit W-3/A which was received back by the worker undelivered and then he raised a demand on 2nd Decemebr, 1979 on which this reference was made by the Government.

Each party cross examined the witnesses of the other party at length. I have gone through both the medical certificates (photo copies) which can be read with a great difficulty only. W-1 is about illness from 24th October, 1979 to 31st October, 1979 and it is said by the workman that he sent it to the management through some body. The management has point blank refused its receipt. The man who delivered it to the respondent has not been produced in this court. This un-corroborated version of the workman cannot be relied upon in absence of any more evidence documentary or at least oral. The other certificate is stated by the worker for illness from 5th November, 1979 to 15th November, 1979 but it is actually not so. It is only for 26th November, 1979 to 27th November, 1979. He says that he was not well on 16th November, 1979 also. All this means that the worker remained absent from duty from 24th October, 1979 to 28th November, 1979. It has not been controverted any where that Model Standing Orders are not applicable on the management respondent. The name of the worker has been struck off the rolls by the respondent under Column 16(4) of Exhibit M-5 Model Standing Orders applicable on them.

The addresses on Exhibit M-2 and M-3 through which the worker was asked to report for duty on 29th October, 1979 are accepted by the worker to be his correct addresses. Same is the case with the address of Exhibit M-4 the intimation to him by the management for striking off his name from the rolls.

The workman admits that in the beginning of a month attendance cards were issued to the workers by the management on which they marked themselves present and these were returned to the management at the end of each month and new were issued to them. The worker states that he did his duty on 2nd November, 1979 but has not produced his attendance card to support this contention, to the reason best known to him. The absence of the card draws an inference against him. No fitness certificate has been produced by the worker of 28th November, 1979 with which he reported for duty on that day.

The feeble objection raised by the representative of the workman is that in attendance register on 3rd and 4th November, 1979 he has been shown as absent while these were holidays but it does not help him at all in absence of his proving his presence on duty beyond doubt on 2nd November, 1979. He has nowhere said that he was not marked present on his attendance card on 2nd November, 1979 also or the card had been taken back from him or he had given it to the management. This is merely a clerical error as he was continuously absenting since 24th October, 1979.

The next point argued from the worker's side is that the intention of the worker should be seen, but in the instant case the worker lost his lien of service and the court even if so wants cannot order his re-instatement in such circumstances.

The next point raised is that he was a willing and peaceful worker and there was never a complaint about his work, but this too does not help him as he has been removed due to his own act of omission and commission.

So having discussed the issue in the above lines, I decide this issue in favour of the management and against the workman.

ISSUE NO. 2:

This issue is about the termination of the worker being proper and justified.

I have decided the issue No. 1 in favour of the management and against the worker who lost his lien of his service. In these circumstances, I feel that he has acted in a manner himself which has proved fatal to his own service with the respondent. This court finds itself helpless in this matter and, therefore held that the management was within its rights to strike off the name of the worker Shri Rajinder Mohan from its rolls. I, therefore, decide this issue in favour of the management and against the workman Shri Rajinder Mohan. I hold that his termination is proper, justified and in order and he is not entitled to any relief. This be read in answer of this reference. No order as to costs.

The 23rd February, 1981.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 495, dated the 2nd March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

The 23rd February, 1981.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/3913/7.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workmen and the

management of M/s Bristol Paints, Plot No. 308, Sector 24, Faridabad:—

IN THE COURT OF SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 80, 141, 142, 169 of 1980
between

S/SHRI SHANKAR YADAV, GULAB PARSHAD, CHANDER SEKHAR AND SUBEDAR AND THE MANAGEMENT OF M/S BRISTOL PAINTS, PLOT NO. 308, SECTOR 24, FARIDABAD

Present:

Shri Darshan Singh for the workmen.

Shri O. P. Tiyagi for the respondent management.

AWARD

These references No. 80, 141, 142 and 169 of 1980 have been referred to this Court by the Hon'ble Governor of Haryana — vide his order No. ID/FD-23-80/9809, dated 25th February, 1980, ID/FD/23-80/10523, dated 27th February, 1980, ID/FD-23-80/10529, dated 27th February, 1980 and ID/FD/45-80/13424, dated 13th March, 1980 under section 10(1)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between the workmen Sarvshri Shankar Yadav, Gulab Parshad, Chander Sekhar and Subedar and the management of M/s Bristol Paints, Plot No. 308, Sector 24, Faridabad. The term of the references was:—

Whether the termination of services of S/Shri Shankar Yadav, Gulab Parshad, Chander Sekhar and Subedar were justified and in order? If not, to what relief are they entitled?

After receiving these references, notices were sent to the parties, who appeared and filed their pleadings. On the pleadings of the following issues were framed:—

(OPM)

(1) Whether the domestic enquiry held by the management was proper, justified and legal? If so, to what effect?

(OPM)

(2) Whether the termination of services of the workmen is proper and justified? If not to what relief are they entitled?

Issue No. 1 was ordered to be treated as preliminary issue and decided first by me. These four cases were ordered to be consolidated on the request of the parties into one on 17th July, 1980 because all the workmen were subjected to a joint domestic enquiry by the same enquiry officer Shri Shangle MW-1 in these references. The evidence to be lead by the parties was the same except the individual statements of the claimant workmen. It was ordered that the evidence in original will be recorded in the reference No. 80 of 1980 of Shri Shankar Yadav, workman which will be in *toto* transferred to the files the rest of the workmen S/Shri Gulab Parshad, Reference No. 141 of 1980, Chander Sekhar, Reference No. 142 of 1980 and Subedar, Reference No. 169 of 1980. Secondly, these references were against the same management and an off shoot of the same incident and the same were the charges against them. My findings issuewise in these references are as under which will be applicable in all the four cases and the award sheets will be treated as an award of each of the references.

1. Shri Shankar Yadav, workman, in his written statement asserts that no opportunity was given to him and *ex parte* order was passed against him by the management which is against natural justice.

2. Shri Gulab Parshad says that the enquiry was not fair and proper of the charges and the management failed to substantiate the charges.

3. Shri Chander Sekhar says that he had not been given any opportunity and *ex parte* order was passed against him which is against the principles of natural justice.

4. Shri Subedar, workman, alleged that he had been illegally terminated as he was not allowed to do his duty from 27th September, 1979 onwards.

These workmen actually have not attacked the enquiry proceedings.

ISSUE NO. 1:

The management produced Shri N. K. Shangle, Enquiry Officer, MW-1, who was Cross-examined at length on behalf of the workman claimants. He proved Exhibit M-1/1 to Exhibit M-1/4 four copies one in each case and Exhibit M-2/1 to Exhibit M-2/4 are their photo copies. Exhibit M-3/1 to M-3/4 are charge-sheets given to each workman. The documents produced in enquiry and proceedings of enquiry, Exhibit M-4. He further has proved his report, Exhibit M-5. He stated that he found these workmen guilty of the charges which were fully established against these workmen. He gave full opportunities to the workmen to cross-examine the management witness, lead their own defence and all facilities and opportunities to these workmen to which they were legally entitled, were given. He further states that on 29th July, 1980 he gave copy of charge-sheets to these workers which they replied through Exhibit M-6/1 to Exhibit M-6/4, M-7/1 to M-7/4. In his cross-examination he stated that all the workers signed the proceedings of enquiry each day and denied the suggestion that copies of charge-sheets were not given to the workers after the first sitting of the enquiry. The workmen signed the proceedings without any protest. Sarvshri Shankar Yadav, Gulab Parshad and Chander Sekhar, workers have admitted the receipt of the charge-sheet and Subedar worker requested for his demand notice to be treated as his claim statement. He did not file any claim statement on 23rd January, 1980. In this demand notice no mention about charge-sheet or enquiry is there. It can be presumed that he has nothing to say about these.

The copy of the charge-sheet was a part of reply of the management respondent and the same has not been denied by any one of them.

Gulab Parshad's case is discussed first of all because he has made a statement as the other workmen's spokesman, in the domestic enquiry and before this court. The other three have adopted his

statement as their own before this court in their cases. The allegations of Gulab Parshad are as under :—

- (1) He was leader of the Trade Union.
- (2) The request of conducting a separate enquiry of each workman was rejected by the enquiry officer, MW-1.
- (3) No copies of standing orders were supplied.
- (4) Opportunity to bring a person as representative to assist was declined by the enquiry officer.
- (5) Defence witnesses were not allowed to be produced.
- (6) The management witnesses were not allowed to be examined.
- (7) Other objections he raised were also not considered.

These are discussed one by one as under :—

1. He has not even been able to name the trade union he claims to be the president of and where did such a union operate. In these conditions his first allegation is not believe worthy.

2. The joint enquiry was ordered on 1st August, 1979 which fact was confirmed on 4th August, 1979. No objection was raised by any one for such a decision, right up to 13th August, 1979 and that day also when already two witnesses of the respondent-management had been examined. This objection was replied by the enquiry officer there and then. Secondly the workmen have no where mentioned as to what injury or injustice has been inflicted on them by holding a joint enquiry, when they had been given full opportunity of cross-examining witnesses of the other party and defend themselves. This allegation of the workmen, therefore, does not stand substantiated on the fairness of the enquiry.

3. The enquiry officer recorded in his proceedings of enquiry of 13th August, 1979, the statement of management witnesses who, clearly state that no certified standing orders were applicable on the respondent. Secondly it was none of the

responsibilities of the enquiry officer to acquaint the workers with the standing orders of the respondent if applicable in the respondent company. This allegation of the workers also stands refuted.

4. Regarding allegation No. 4 the perusal of pages 2 and 8 of the enquiry proceedings, Exhibit W-4 will show that they were allowed co-workers to assist and represent them in enquiry. This allegation of the workers stands refuted.

Next comes the allegation of not being allowed the opportunity of leading defence evidence by producing defence witnesses. What more Gulab Parshad himself has admitted in this court that when he appeared as MW-2 in the enquiry proceedings, firstly he tried to allege that his statement was not recorded correctly but this plea also fails as he admitted before this court in his statement, when he was confronted with it, he admitted that it was correct. His statement in *verbatim* is reproduced as under :—

I had not made an application before the Enquiry Officer after the recording of my statement that I wanted to give more evidence in the enquiry and what evidence I wanted to lead.

Shri Gulab Parshad alleged that he was proceeded *ex parte* by the enquiry officer but the perusal of the enquiry proceedings falsify his assertion. He was present throughout in the enquiry. As far as allegation No. 6 is concerned it has been proved by MW-1 beyond any shadow of doubt that he cross-examined all witnesses of the management in the enquiry. He signed each page of the enquiry and received the copies of the proceedings. He has nowhere mentioned the name of any witness in this enquiry who was not allowed to be cross-examined by him. His next allegation is that his other objections raised by him in the enquiry were not attended to, but this allegation is through and through wrong. The proceedings of 13th August, 1979, at page 8 of the proceedings of the enquiry contains a letter of 13th August, 1979 which was dealt with fairly by the enquiry officer. The reply of the enquiry officer even bears the signatures of Shri Gulab

Parshad. There is nothing on record before me which could prove that workmen may have objected to something which was not rightly replied by the Enquiry Officer. Shri Gulab Parshad has produced Exhibit W-1, W-2, W-3. In Exhibit W-1 he says that it was a protest but it is an allegation that the charge-sheet had not been received by him and this fact has been denied by the representative of the management. Earlier also it has come that the enquiry officer had supplied a copy of the charge-sheet before the start of the enquiry to him. Moreover, he had himself admitted this in the claim statement. He had received such a copy. About Exhibit W-2 he says he demanded facilities in it, but it is also wrong. Exhibit W-2 is reply of the charge-sheet. He has in the cross-examination clearly stated before this court that his enquiry started on 1st April, 1979 and he says that he protested on 29th July, 1979. How imaginary it looks in belief? How could he anticipate that the enquiry officer was not going to hold a fair and proper enquiry? He says in his cross-examination on 29th July, 1979 he made an application for holding the domestic enquiry separately, but such an application is totally missing. He says that Exhibit W-3 is a letter to that effect but this letter Exhibit W-3 is of 13th August, 1979 and not 29th July, 1979. The enquiry officer has fully dealt with it. Shri Gulab Parshad admits his signatures on each page of enquiry. He says that the enquiry concluded on 20th August, 1979, whereas the proceedings of 22nd August, 1979 bears his signatures.

Having discussed in the above lines, the facts I am of the view that Sh. Gulab Parshad has utterly failed to substantiate the allegations that the enquiry conducted by the enquiry officer was not fair and proper. As all the other three workmen have also relied on the statement of Shri Gulab Parshad as WW-1, they also meet the same fate and enquiry conducted against them is held to be fair and proper. Moreover, I discuss that separately.

Shri Chander Sekhar says that *ex parte* order was passed by management against him, but the management was no body to pass any *ex parte* order

against him. This workman has himself participated in the enquiry proceedings till 20th July, 1979 when two of their witnesses were examined and cross-examined. They are Sarvshri Subedar Yadav WW-1 and Gulab Parshad WW-2. From 20th July, 1979, the enquiry was adjourned to 22nd August, 1979 on which date these workmen did not appear nor did they inform the enquiry officer about his absence. Therefore, proceeding *ex parte* against them for absenting without informing on 22nd August, 1979 by the enquiry officer in the enquiry proceedings is quite in order. He has not raised a little finger anywhere for this *ex parte* order and, therefore, an inference is drawn that he had no complaint about it. Shri N. K. Shangle over and above has proved the enquiry and stated that it was fair and proper. These workmen did not even care to appear as their own witnesses. Similarly, Shri Chander Sekhar and Shankar Yadav have obtained the statement of Shri Gulab Parshad as their own. In these circumstances they had not given any evidence and rebuttal *ex parte* evidence, therefore, the enquiry is held to be fair and proper. Shri Shankar Yadav did receive the notice of enquiry in which he appeared on 29th July, 1979, 1st August, 1979 and 4th August, 1979. In the proceedings of these dates two witnesses of the management were recorded. He absented on 10th August, 1979. Shri Gulab Parshad presented a letter that his workman and two other workmen have fallen ill. The request of Shri Gulab Parshad was acceded to as he had undertaken to produce them on 13th August, 1979. On that adjourned date of hearing of 13th August, 1979, these workmen did not appear. Again the enquiry was adjourned to 16th August, 1979 and the enquiry officer had given clear indication if on the adjourned date, i.e., 16th August, 1979 any of the workmen did not appear he will be proceeded *ex parte* and Shri Shankar Yadav did not appear on that date and, therefore, he had to be proceeded *ex parte*. This action of the enquiry officer of proceeding *ex parte* against these workmen is quite in order and legal. Moreover, this workman Shri Sankar Yadav never protested against proceedings

of *ex parte* against him by the enquiry officer MW-1. Shri Subedar did not attack the enquiry in his pleadings. He was offered full opportunity to defend himself. He was present in the enquiry on 29th July, 1979, 4th August, 1979, 10th August, 1979, 13th August, 1979, 16th August, 1979 and 20th August, 1979. He received the copies of the proceedings and cross-examined the management witnesses also. He was allowed opportunity to defend himself and he appeared in the enquiry as his own witness on 20th August, 1979. All these facts have been proved by Shri N. K. Shangle in this court as MW-1. It is, therefore, found after discussion on Issue No. 1 in the above line that the enquiry conducted by the enquiry officer was quite fair and proper and justified. The other points which need mention in this issue are also of importance which I deal with separately for each workman. I have personally gone through the enquiry proceedings:—

1. SHANKAR YADAV :

He was charged that on 23rd March, 1979, at about 4.30 p.m. he along with other workmen pushed open the main gate of the factory and attacked the staff with sticks and stone. He also smashed glasses of the office. As a result of his stone throwing, Shri Harmesh Singh got injured.

This action of the workman amounts to riotous and disorderly behaviour inside and around the factory, damaging employer's property.

2. SHRI SUEEDAR YADAV.

He was charged that at about 2.00 p.m. on 23rd March, 1979, he addressed and Shri Pradeep saying that he was a stooge of employers. Thereafter, he caught and pulled him down, beat with fists and threatened him of murder. After that at about 4.00 p.m. he along with some other workmen surrounded him near the gate, and beat him severely. He also attacked Shri Anil Bakshi (Supervisor) and Shri Harkesh Chowkidar, who tried to intervene. He also threatened them of taking their lives. After that, again about at 4-30 p.m., he with others forcibly pushed open the factory main gate, attacked the staff and smashed the glasses of the office of the factory.

This action of the workman amounts to assaulting a co-workman inside the factory premises, assaulting a person superior in rank of the factory, disorderly and riotous behaviour inside the factory, damaging employers' property and causing grievious hurt to other employees inside the factory premises.

3. SHRI CHANDER SEKHAR:

He is charged that on 23rd March, 1979, at about 4-30 p.m., he forced open the main gate of the factory. Forcibly entered the factory, attacked the staff with sticks and stones and smashed the glasses of the office. Shri Virender Verma sustained injuries from the stones thrown by him.

This action of the workman amounts to riotous and disorderly behaviour inside and near the factory, assaulting superior employees or co-workmen inside the factory, damaging the employers' property, and act subversive of discipline.

4. SHRI GULAB PARSHAD :

He is charged that on 23rd March, 1979 at about 4.00 p.m. he along with other workmen assaulted Shri Pradeep Kumar, when Shri Harkesh, Chowkidar and Anil Bakshi intervened he threatened them. He again gave threat of life to Shri Anil Bakshi and called upon the workmen in a loud voice to assault Shri Anil Bakshi and he himself started assaulting him. Again at about 4-30 p.m., he along with other workmen forced open the main gate of the factory and attacked the staff with sticks and stones, smashed glasses of the office and assaulted Shri Anil Bakshi with iron rod and stones as a result of which he sustained injuries.

The above acts of the workmen amount to acts subversive of discipline, riotous and disorderly behaviour inside and around the factory; assaulting co-workman at the factory gate inside the factory premises, and damaging the property of the employers.

The objection raised is that the enquiry officer Shri N. K. Shangle, has given his findings on the dictation of the

respondent-management, but I cannot agree with the arguments of the workman because he is neither adviser nor an employee of the respondent and he is an Advocate and well conversant with law. It has been admitted that less than 50 workmen work in the factory. Therefore, question of certified standing orders of the respondent itself or applicability of the Model Standing Orders does not arise. The next objection raised from the workman's side was that they were charge-sheeted on 29th July, 1979 when the enquiry had already been started, but the contention of the workman is wrong. The Enquiry Officer has stated that the charge-sheet was given to the workmen before the start of the enquiry. The next objection was that the workman was not present on each date of hearing, but this objection does not stand credence because once they new the date it was their own responsibility to find out the next date of enquiry and be present in it. The management from its side in reply of this objection has cited FLR-1978-Vol. 36, page 241, M/s Hindustan Aluminium Corporation Limited, Renukoot, Mirzapur and Shri Murari Singh and others. In this ruling it was held that it is the duty of the parties to be present on date fixed—Request for adjournment made by post—Duty of parties to ascertain as to what orders have been passed on request for adjournment—Labour Court held justified in passing *ex parte* award. Similarly the Enquiry Officer was justified in proceeding *ex parte* if the workman was not present on the adjourned date.

The representative of the workman raised objection that when 100/200 persons had attacked, only 4 charge-sheets were issued to workmen only. They cited 1967-LLJ-Vol.II(S.C.) in their support. I am afraid to mention that this ruling is not at all applicable in the present case. If the management had not proceeded few other or the rest of the workmen that does not absolved these workmen of their responsibility and liability for the commission of the charges levelled against them. Two wrongs do not make a right. Secondly, if the other

workmen have been left by the management to be charge-sheeted, the management is left there to face the music. The next objection raised by the representative of the workman is that Shri O. D. Sharma, Labour Officer-cum-Conciliation Officer, Faridabad-II, was appointed as sole arbitrator who declined to arbitrate in this matter because of the fault of the respondent-management. In absence of any evidence to that effect the management cannot be held responsible for Shri O. D. Sharma's not arbitrating in the matter between the parties. From the side of the management it was argued in reply to that objection that Shri O. D. Sharma was very busy and he could not complete the arbitration proceedings within time limit, so no arbitration proceedings were held by him.

In view of the above discussion in details I think, I have left no point untouched in this case. The enquiry I feel is quite proper, justified and in order. The Enquiry Officer has not left anything to be done which was required during enquiry based on principles of natural justice. I, therefore, hold this issue against the workmen S/Shri Sankar Yadav, Gulab Parshad, Chander Sekhar and Subedar and in favour of the respondent-management M/s Bristol Paints, Sector 24, Faridabad.

ISSUE NO. 2:

Since I have decided Issue No. 1 in favour of the respondent-management and against the workmen and the enquiry has been held quite proper and justified based on natural justice, I feel that the charges are of very grave criminal nature, I should not interfere with the decision taken by the respondent-management on the enquiry report in which the workmen were found guilty of the charges. I, therefore, decide this issue against the workmen S/Shri Sankar Yadav, Gulab Parshad, Chander Sekhar and in favour of the respondent M/s Bristol Paints, Sector 24, Faridabad. These workmen are not entitled to any relief. This be read in answer to this reference. No order as to costs.

The 24th February, 1981.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 505, dated 2nd March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab/3913/8.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Bharat Carpets Ltd., Amar Nagar, Faridabad :—

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD

Reference Nos. 3 of 1980, 2 of 1980
and 18 of 1980

between

S/SHRI LAL JI PARSAD, JAGBIR SINGH AND HARISH CHANDER WORKMEN AND THE MANAGEMENT OF M/S. BHARAT CARPETS LTD., AMAR NAGAR, FARIDABAD.

Present:—

Shri K. R. R. Pillay, for the workmen.
Shri S. K. Sharma, for the respondent-management.

AWARD

These reference Nos. 3, 2 & 18 of 1980 have been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/216-79/58487, dated 31st December, 1979, 216-79/58481, dated 31st December, 1979 and 297-79/988, dated 9th January, 1980 under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of disputes existing between S/Shri Lal Ji Parsad, Jagbir Singh and Harish Chander workmen and the management of M/s. Bharat Carpets Ltd., Amar Nagar, Faridabad. The terms of the references were:—

Whether the terminations of services of S/Shri Lal Ji Parsad, Jagbir Singh and Harish Chander were justified and in order? If not, to what relief are they entitled?

After receiving these references, notices were sent to both the parties. But on 17th January, 1980 none was present on behalf of the respondent management in Reference Nos. 3 & 2 of 1980 of S/Shri Lal Ji Parsad and Jagbir Singh, when the service of the notices had been effected on the respondent management. So the ex parte awards were sent in favour of the workmen S/Shri Lal Ji Parsad and Jagbir Singh,—vide this Court letter Nos. 207 and 208 dated 30th January, 1980 by my learned predecessor. After that in these two cases the management appeared made an application for setting aside the ex parte award dated 30th January, 1980 on which the workmen were called through notice and arguments were heard on this application. After obtaining their reply on that application the ex parte awards were ordered to be set aside on 10th June, 1980. The parties filed their pleadings, on the pleadings of the parties, the following issues were framed:—

Adjudication No. 3 of 1980.

1. Whether the domestic enquiry held by the management is fair and proper? If so, to what effect?
2. Whether the principal of resjudicata apply to this case, in the light of award passed by the Labour Secretary as an arbitrator? If so, what effect? OPM

3. Whether the termination of services of the workman is proper, justified and in order? If so, to what relief is he entitled?

4. Relief.

Adjudication No. 2 of 1980.

Same issues as framed in adjudication No. 3 of 1980, referred above.

Adjudication No. 18 of 1980.

1. Whether this court has no jurisdiction to adjudicate this reference.
2. Whether this reference is bad in law?
3. Whether the domestic enquiry held by the management was fair, proper and according to the principles of the natural justice?
4. Whether the termination of the services of the workmen is justified and in order? If not, to what relief is he entitled

In adjudication case No. 3 of 1980 and 2 of 1980 the representative of the management conceded in the course of the arguments that he does not want to press issue No. 2 in the respective cases. In view of the admitted statement of the representative of the management, I hold the issue in both the cases, against the management, though nothing has been argued on behalf of the workmen.

In adjudication case No. 18 of 1980 the first two issues had already been decided by me on 14th May, 1980.

VIRES OF ENQUIRY—ISSUE:—

At the time of evidence in Lalji Parsad and Jagbir Singh cases, a joint request was made by both the parties, to consolidate these cases having similar fact, circumstances and pleadings which were allowed by me. The representative of the management requested for the consolidation of the third case of Shri Harish Chander but on account of non-availability of Shri Harish Chander at that time, his case remained separate. However, at the time of arguments, the representative of the management addressed joint arguments on all these three cases, with the plea that the concerned workmen

were involved in the same incident, pleadings are similar, inquiry officer is common and all the workmen have preferred not to depose before this court and so on. From the side of the workmen a similar type of request is available in the written arguments submitted in this court. I shall discuss these three cases jointly but a copy of my order is to be placed in each file.

From the side of the workmen no oral evidence was adduced before me, inspite of allowing them various opportunities to do so. There is no rebuttal produced by the workmen. In their written arguments not substantiated, by either their pleadings or any evidence, the workmen had contended that refusal of communication is not presumption for service, the paper advertisement in Shere Haryana is not a recognised paper, the postal authorities can be purchased in today set up of circumstances, the workmen had been acquitted, by criminal courts.

Since the refusal of the service by the workman has been indicated by an independent agency of post office, the legal presumption is that such a refusal was made by the addressee and none else. The remarks of the postal authorities can safely be presumed true in law and until and unless it has not been proved by the other party to be biased or made up. Moreover, the workmen had not cared to come before me in the witness box in own defence to substantiate their arguments and charge against the independent agency like the postal authorities. A perusal of the pleadings advanced by the workmen will itself support my views whereas such an objection or point at all not been cared to be raised by the workmen themselves. Moreover, judicial notice of remarks of the agencies like postal authorities can safely be taken as admissible in a case. I cannot outrightly discard the remarks of the postal authorities, over a wild allegation raised only at the time of the arguments stage, that such an agency can made a wrong report more especially when no bias against them has been brought, pleaded or advanced before this court. Similarly the arguments advanced from the side of the workmen is that the news paper in which

the insertion of the notice of the enquiry was published is not recognised or popular newspaper. There is no evidence from the side of the workmen to substantiate this fact on record of the file of this court. Secondly, I am afraid I cannot agree with the contention of the workman in this regard. The news paper is certainly having a registered number and is published locally in the regional language. In these circumstances in absence of pleadings to this effect and evidence thereof, I think that this objection has been raised at the arguments staged by the representative of the workman merely for the sake of objection and is an after thought. I am constrained to disagree with this contention of the workmen.

The next point raised in the written arguments from the side of workmen is that the concerned workmen Shri Lal Ji Parshad and Jagbir Singh have been acquitted from the criminal court. There is no dispute that the third workman Shri Harish Chander is still languishing in jail. All these workmen are alleged to be involved in concerted criminal acts of violence. This argument is neither supported by the pleading of the workmen nor by evidence, oral or documentary. The representative of the management had argued that although in the absence of pleadings and evidence thereon this argument has got no relevency, yet the settled law on the point is quite clear that acquittal from the criminal proceeding has got no bearing upon the disciplinary action being taken against the delinquent workman after holding of fair and proper enquiry. The representative of the management cited the following decision of the Hon'ble Supreme Court of India:—

1. Delhi Cloth and General Mills Vs. Kushal Bhan-1960-61-Vol. 19 F.J.R. 183.
2. Tata Oil Mills Company Vs. its workmen-HR-1964-(9) page 142).

I am left with no choice except to agree with the Hon'ble Judges of the Hon'ble Supreme court who have drawn broad principles for the guidelines for the subordinate court, out of which I am

one. These authorities are fool proof and are having all force, I bow before them. I am of the view that the applicant's acquittal from a law court has got no intervention in a domestic enquiry being held against him. Therefore, the domestic enquiry, held against these workmen were legal and proper.

The representative of the management has argued before me that the management made all efforts to make the communication complete but on account of deliberate evading of the workmen the letters were returned un-delivered with the remarks by the postal authorities, he had stressed upon the fact that the management did not leave any stone unturned to provide an opportunity to the workmen to attend the domestic enquiry to defend himself to enable him to prove his innocence. He has drawn my attention towards clause II-c of the certified standing orders applicable in the respondent's company wherein it is a patent condition that whenever any worker changed his address he was bound to intimate the same to the respondent, otherwise it will be presumed that no change of address took place. The management's representative further argued that he had produced voluminous documents which cannot be made overnight and are not liable to be ignored. He says that not only the communications were sent at the recorded addresses but the information were also got published in the local papers in the regional language. In support of this contention the representative of the respondent's management has cited the case decided by their Lordships in Bata Shoe Company Pvt. Ltd., Vs. D. N. Gangoli reported in 1961-H.R. (Vol. 2 page 183). In this case their Lordships of the Supreme Court were pleased to hold that in case the letters sent to the workman returned un-delivered the management have to get them published in some local news paper in the regional language and that will be deemed to be an effective service on the addressee and the same is a fact in this case. The representative of the management had argued that in case the workman is not willing to participate in the enquiry the same can be proceeded

ex parte. He has relied upon the following citations:—

1. M/s. Laxmi Devi Sugar Mills, Ltd., Vs. Pandit Ram Saroop (1957)LLJ(I)-Page-17) (SC-FB) (Five Judges).
2. Brooke Bond India Pvt. Ltd., Vs. S. Subbataman—1961-62-FJR-Vol. XX Page 424 S.C. (D.R.)

Having discussed this issue in details in the above lines, I am left with no choice except to agree with the contentions of the representative of the management. Moreover, I am in agreement with the representative of the management and he gets force with the guidelines, observation and principles laid down by their Lordships of the Highest Court of the land. Under these circumstances, I decide this issue in favour of the management, and against the workman. I hold that the domestic enquiry, held by the management was quite proper, fair, justified and in order. It was certainly based on the principle of natural justice.

The charges against the workmen are of very serious and grave nature and therefore, I hold that the punishment awarded to the workman is quite proportionate to misconduct established against them.

In view of the findings on the above issue the decision of the remaining issues need no trial. With this I give my award that the workmen S/Shri Lal Ji Parshad, Jagbir Singh and Harish Chander, are not entitled to any relief, and the termination of services of the workmen are legal, justified and in order. This be read in answer to this reference. No order as to costs.

Let the copy of this award be placed in Reference No. 2 of 1980 and 18 of 1980 and my award is same on those two references and the award in those two cases is made accordingly.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court,
Haryana, Faridabad.

Endorsement No. 498, dated the 2nd March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government of Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947 with the request that the receipt of the award may kindly be sent to this court, within week's time.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court,
Haryana, Faridabad.

No. 9(1)81-8Lab/3913/9.—In pursuance of the provision of Section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and the management of M/s. Super India Rubber Company, Plot No. 42, Sector 24, Faridabad.

IN THE COURT OF
SHRI ISHWAR PRASAD CHAUDHRY,
PRESIDING OFFICER,
LABOUR COURT,
HARYANA, FARIDABAD.
Reference No. 261 of 1980
between
SHRI DEEP NARAYAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S. SUPER INDIA RUBBER COMPANY, PLOT NO. 42, SECTOR 24,
FARIDABAD.

Present:

Shri Sagar Ram Gupta, for the workman.

Shri R. C. Sharma, for the respondent management.

AWARD

This reference No. 261 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/64-80/24885, dated 13th May, 1980, under Section 10(i)(c) of the Industrial Disputes Act, 1947 for adjudication of the dispute existing between Shri Deep Narayan Singh and the management of M/s. Super India Rubber Company, Plot No. 42, Sector 24, Faridabad. The term of the reference was:—

Whether the termination of services of Shri Deep Narayan

Singh was justified and in order? If not to what relief is he entitled?

After receiving this reference notices were sent to both the parties, who appeared and filed their pleadings. On the pleadings of the parties, following issues are framed:—

1. Whether the termination of services of the workman is proper, justified and in order? If not to what relief is he entitled?

2. Relief?

The case of the management is that the workman Shri Deep Narayan Singh went on leave from 24th February, 1980 to 9th March, 1980, thereafter he started remaining absent without any intimation or sanction of leave. His name was struck off from the rolls of the respondent company with effect from 25th March, 1980 as per the provisions of the model standing orders applicable on the respondents.

The case of the workman is that he proceeded on leave which was to expire on 10th March, 1980 as the workman fell ill he sent a medical certificate dated 8th March, 1980 by registered A.D. cover in which he was advised rest from 11th March, 1980 to 17th March, 1980. The workman stated further that he was refused to resume his duty on 18th March, 1980 by the respondent when he reported for it and thereafter raised a demand.

The management to prove their case produced Sohawan Ram, Supervisor, respondent company as MW-1 and Shri O. P. Cheker, Managing Director of the company as MW-2. These witnesses made their statements on oath before me, saying that the workman was absent without leave from 10th March, 1980 and they did not receive any information or intimation of his absence and that ultimately his name was struck off the rolls of the company from 24th March, 1980 being absent for more than 10 days as per clauses of Model Standing Orders for loss of lien. They have stated further that they received Exhibit M-2 letter of the Conciliation Officer on 26th March, 1980.

The workman appeared as his own witness as WW-2 and Dr. V. S. Singh Medical Officer incharge, Dabra Estate Dispensary, Dist. Gorakhpur as MW-1.

WW-1 stated in this court that he had recommended rest to the workman from 11th March, 1980 to 17th March, 1980 through a medical certificate copy of which is Exhibit W-1, dated 8th March, 1980. In his cross examination this witness agreed that he had not recommended rest to this workman although he was under his treatment as an out door patient for 9th and 10th March, 1980. He also states that this workman was admitted in hospital on 8th March, 1980 as an emergency case and remained there for 2/3 days thereafter he was discharged. Further in his cross examination he has admitted that this worker was never admitted in hospital as an indoor patient. The workman in his statement stated that he sent his medical certificate from a doctor in Gorakhpur and then when he reported for duty on 18th March, 1980 the respondents did not allow him to resume his duty. He further stated that the medical certificate was sent through Registered A.D. cover, the receipt of which is Exhibit W-1. The worker however has not cared to produce fitness certificate which certainly would have proved beyond doubt as to on which date he actually reported for duty. The non-production and withholding of such a document by the worker presses me to draw an inference against him.

The most important crucial documents is the postal receipt Exhibit W-1 through which the alleged medical certificate, copy of which is Exhibit W-2 was sent to the respondent by this worker. This W-2 bears the address of the respondent as M/s. Super India Rubber Co., Plot No. 42, Faridabad, whereas the address actually of the respondent is Super India Rubber Co., Plot No. 42, Sector 24, Faridabad. This address is quite incomplete as there is no sector. No mention in this Exhibit W-1. The contention of the respondent gets corroboration from this documents that they never received any medical certificate from the worker. Secondly the worker has nowhere stated that this medical certificate was accompanied by an application for extension of leave. The respondent's representative has cited the case of Employer's in relation of M/s. Jagdamba Coataries and Vice-

President Koyal Mazdoor Panchayat and others—1972-LL-J-Vol. II page 71 (Patna) (D.B.) In this case their Lordships were pleased to hold that a medical certificate for extension of leave must be accompanied by an application, and no inference of malafide and victimization can be drawn.

The next point raised was on the medical certificate Exhibit M-2 itself. It is a peculiar type of document in which a doctor has suggested rest to a patient not from the date he examines the patient actually, but from three days hence after the date of diagnosis and advising rest for a week. The doctor in his cross examination has also agreed that he did not advise rest for 8, 9, and 10th March, 1980 and he had advised rest from 11th March, 1980 to 17th March, 1980. It is admitted that Model Standing Orders are applicable in the respondent company, of which clause 16(4) provides for loss of lien for absence from duty of 10 or more days.

Absence from duty is also misconduct. The workman representative stressed that the workman should have been charge sheeted and domestic enquiry held against him in this case. This contention is without force in view of the decision of the Hon'ble Supreme Court in case of Buckingham and Curnatic Co. Ltd., Vs. Venkatiah and others 1963-64-FJR-Volume 25 Page 25.

The next contention of the worker is that such terminations are all retrenchments and he has relied on the decision of Hon'ble Supreme Court in case 1977 L.I.C. page 1695 and 1980 LLJ Vol. II Page 72.

I have gone through the citations and I fear say that none of these citations have laid down any such law. The law is that all termination except for misconduct are to be treated as retrenchment. The question now arises is that what actually termination means so as to come within the purview of word retrenchment. Retrenchment as defined in Industrial Disputes Act, 1947 is termination of services of a workman by a management and it does not include voluntarily retirement of a workman. The question now arises, whether such a

striking of the name of the worker for long absence under the standing orders (i) amounts to termination or is (2) included in the definition of voluntarily retirement. If such a case is covered under clause (i) it will attract the provisions of section 25(f) of the Industrial Disputes Act but it can be placed within the ambit of clause (2) then it will not be a termination and hence section 25-F will not be attracted. The termination of a worker by his employer can be effected in two ways, by positive act or negative one. Where the workers has been terminated by giving him a letter of termination such an act is known as positive act of the employer but in its absence if a worker is stopped at the gate, such a termination will be known as termination by the negative act.

Similarly a worker may terminate the contract of service by tendering resignation, a positive act, or by simply abandoning his services without notice by remaining absent, i.e. a negative act.

It will not be out of place to mention that the words "striking off the name of a worker from the rolls by the management is termination of the services. Such termination of services is retrenchment with in the meaning of Section 2 (oo) of the Act, refers to the act of the management and not to that of the workman.

What happens when a workman resigns ? The management accepts his resignation and the consequence of the same is striking off his name from their rolls. Does such a striking of his name amount to retrenchment ? The answer would be no. This my contention finds full support from the judgement delivered by their Lordships cited as 1977—L.I.C. Page 1695 (S.C.)—1978—LLN Vol. I Page 25 Para 30 where in their Lordships were pleased to hold "So even under the standing orders the workman was not absent for more than 8 consecutive days on 24th August, 1965. The order is therefore, clearly untenable even on the basis of standing order". It clearly shows that if the order could have been sustained on the basis of standing orders it would not fall within the ambit of section 25-F but would fall within the exception of 2(oo) of the Industrial Disputes Act, 1947.

In view of my discussions above I hold that such cases of striking of the name are not covered under the term retrenchment.

In view of what I have discussed in the foregoing paras, I hold that the workman Shri Deep Narain Singh remained absent without sanction of leave and intimation and that the striking of his name as per clause 16(4) of the Model Standing Order is quite justified and in order. He, therefore, is not entitled to any relief. This is read in answer to this reference. No order as to costs.

The 25th February, 1981.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court,
Haryana, Faridabad.

Endorsement No. 506, dated the 3rd March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947 with the request that receipt of the award may please be sent to the court within a week.

ISHWAR PRASAD CHAUDHRY,
Presiding Officer,
Labour Court,
Haryana, Faridabad.

No. 9(1)81-8Lab/3913/10.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad, in respect of the dispute between the workman and management of M/s Delton Cable Industries, Pvt. Ltd., Mathura Road, Faridabad:—

IN THE COURT OF ISHWAR PRASAD CHAUDHRY,

PRESIDING OFFICER,
LABOUR COURT, HARYANA,
FARIDABAD

Reference No. 143 of 1980
between

SHRI V. P. GUPTA, WORKMAN AND
THE MANAGEMENT OF M/S
DELTON CABLE INDUSTRIES (P.)
LTD., 17/4, MATHURA ROAD,
FARIDABAD

Present:

Shri Sagar Ram Gupta for the workman.

Shri S. K. Bhasin, for the respondent-management.

AWARD

This reference No. 143 of 1980 has been referred to this court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/204-79/10517, dated 27th February, 1980, under section 10(1)(c) of the Industrial Disputes Act, 1947, for adjudication of the dispute existing between Shri V. P. Gupta, workman and the management of M/s. Delton Cable Industries (P) Ltd., 17/4, Mathura Road, Faridabad. The term of the reference was:—

Whether the dismissal of Shri V. P. Gupta, was justified and in order? If not, to what relief is he entitled?

After receiving this reference, notices were sent to both the parties, who appeared and filed their pleadings. On the pleadings of the parties, the following issues are framed on 20th June, 1980:—

- (1) Whether the claimant Sh. V. P. Gupta falls under the definition of workman under the Industrial Disputes Act ? If so, to what effect? (OP.W).
- (2) Whether the reference is bad in law, in view of the objection raised in the written statement (OPM). If so, to what effect ?
- (3) Whether proper and valid domestic enquiry has been conducted ? If so, to what effect? (OPM).
- (4) Whether the termination of the services of the workman is proper justified and in order? If not to what relief is he entitled? (OPM).
- (5) Relief.

Issue No. 1 and 2 were ordered to be treated as preliminary issues and were to be decided first. My findings on these issues are as under:—

ISSUE NO. 1:

This issue is about the fact that the claimant Shri V. P. Gupta, is at all a workman or not, under the Industrial Disputes Act and its effects. The onus of

this issue is on the claimant Shri V. P. Gupta. To prove his case Shri V. P. Gupta claimant appeared as WW-1 himself as his own witness and produced Exhibit W-1 his confirmation letter as Clerk, W-2 letter of the management to the claimant workman redesignating him as Security Inspector and Exhibit W-3 letter of Joint Labour Commissioner to M/s Delton Cables, respondents with a copy to Shri Gupta claimant.

Shri V. P. Gupta, claimant in his statement before this court stated that he joined the respondent-company as a clerk on 1st June, 1971 at a salary of Rs. 160 per mensem initially. He says that at the time of termination he was chargeman Security which is equivalent to Security Inspector. In his statement further he has said that he drew Rs. 585 at the time of his dismissal. All these facts have not been denied by the respondent-management. He says he was under Security Officer, Senior Security Officer, Personal Officer, Head of various Departments, Assistant Works Manager, Works Manager and General Manager. He further says that he had no power to recruit, terminate, reduce or increase wages of a worker, because his duties were of clerical nature, he was ordered to fill up leave application forms of other workmen, and countersign them which were approved by the Security which is equivalent to Security printed form attached with the leave application the departmental incharge ordered grant or refusal of such leave, and gave the same to workmen concerned. He did not know if such perforated slips were retained by the management or not. Such application forms are Exhibit M-1 to M-7 which he did not sign or any other such form at point A on Exhibit M-1 to M-7 for refusal or grant of leave to the applicants. He again says that his signatures on Exhibit M-1 to M-7 are due to the authorisation given to him by Personnel Officer of the management. He says his signatures on Exhibit M-1 to M-7 are present only for forwarding these applications. His duties were to make entry of material coming and out going of the respondent factory. The material was weighed under his care, which also he entered in the registers. He filled up the

duty register of workers. He performed the duties of a chowkidar, if one went from there temporarily for taking tea, etc. He got the material loaded and un-loaded in his presence. He accompanied the people of account branch to bank as a guard when they carried money. He got the cycles of the workers parked in line. In the beginning he sold the coupons of canteen for one year. He says these were his total duties. Out of 8 hours duty from 6 to 7 hours he did the duty of a clerk, and he had to get material from stores. Store items which were expensive were issued on the signatures of the Security Officer, but small items like torch cells, etc. were issued under his signatures. Such items could be got even on the signatures of watchman also.

The management produced Shri S. S. Saini its Personal Manager as MW-1 in rebuttal and produced, Exhibit M-1 to M-11, M-13 to M-46, M-50 to M-54 different documents to prove their case and rebut the contention of the claimant V. P. Gupta. Exhibit M-1 to M-7 are photo copies of leave applications of different workmen. The claimant Shri V. P. Gupta has admitted his signatures on these. Exhibit M-8 is application of claimant Shri V. P. Gupta to the Security Officer for promotion as Security Supervisor. This Shri Gupta admitted that he made it. It is dated 8th June, 1972. Exhibit M-9 is the recommendation of the Security Officer to the Manager of the respondent factory for allowing promotion to Gupta as Security Supervisor and it is also dated 8th June, 1972. This Exhibit is in support of Exhibit M-8. Exhibit M-10 to M-46 are other documents produced by the management, and admitted by the claimant workman that they bear his signatures. Exhibit M-50 and M-51 are two identity cards of workmen issued by management bearing signatures of claimant Shri V. P. Gupta, M-52 is promotion order of Shri V. P. Gupta as chargeman Security, with effect from 1st June, 1972. It is dated 14th June, 1972. It bears signatures of Shri V. P. Gupta at a point A. Exhibit M-53 is organisational charge of the security staff. Exhibit M-54 is the refusal of Joint Labour Secretary to the claimant V. P. Gupta declining to

refer his case to Labour Court as he did not fall in the category of workman.

MW-1 Shri S. S. Saini the solitary management witness stated that the claimant Shri V. P. Gupta worked as Security Inspector in the respondent factory. A Security Inspector, Security Supervisor or chargeman security are the different names of the same officer and V. P. Gupta was such an officer. He says that he was an officer of the first rank in the respondent factory. He says that he was promoted from a clerk to his post on his request Exhibit M-8 on which recommendation, Exhibit M-9 was made by the Security Officer on 8th June, 1972 and the management promoted him as such on 14th August, 1972. The salary is admitted by both the parties to be Rs. 581 per mensem in total. This witness says that V. P. Gupta, claimant got a substantial raise in his salary at the time of his promotion as chargeman security. He produced Exhibit M-53 the organisational chart of security staff for ready reference. He says there are more than one Security Inspectors who come in shifts. The other officer of security staff over and above Security Inspectors come only in general shift or 2nd shift, whereas Security Inspectors come in all the three shifts by rotation. In first and third shifts the Security Inspector is an over all incharge of the factory in security matters like the senior security officer. A Security Inspector has controls over five watchmen, a driver and a rickshaw puller in 1st and 3rd shifts, i.e., 12.00 mid-night to 8.00 a.m., and they are under his sole supervision. In the 2nd shift, i.e., 8.00 a.m. to 5.00 p.m as many as 16 such employees are under him such as watchmen, drivers, rickshaw pullers and sweepers. A Security Inspectors' duties he tells further are, allotting duties to persons under him, detains them at factory gate, send them to watch towers, send them around factory and see loading and un-loading of materials. If there is a visitor send his subordinate to accompany him, can order them to come for overtime duty at the time of need, and can order them to give duty extra to their duties. The Security Inspector sanctions leave of his staff.

recommended loans advance for them, recommends promotions of his staff to higher officers after satisfying personally himself, on which annual increments are granted to them, workmen in-coming and out-going workers are searched under his supervision, by chowkidars, draws materials for security staff from stores and issues the same to them, issues identity cards to factory workers under his signatures, out of which, Exhibit M-50 and M-51 are such two identity cards which were issued under his signatures and are valid cards, claims of overtime to staff under him is given only under his orders. A chargeman security/Security Inspector is provided with a chair and a table to sit and three telephones one intercom, second connected with the factory exchange board and third directly connected with the exchange of Telephone Department. This facility is even not available to Senior Officers of factory.

The writing work a Security Inspector has to do in 8 hours shift is of about 10 to 30 minutes in a day in the general shift and almost nil in 1st and 3rd shift. The witness says that a Security Inspector like V. P. Gupta, claimant has to do is just to enter the name of a visitor in visitor register if there is one, enters the in-coming and out-going material in the register meant for it and these registers are always lying on his table. On holidays a Security Inspector is sole incharge. He says further that V. P. Gupta, claimant, raised a demand for his dismissal with the Government which was declined by the Government, saying he did not come under the definition of a workman under the Industrial Disputes Act, 1947. This reference was made when the Joint Labour Commissioner visited Faridabad, but the claimant did not produce any fresh ground or material before him and the reference was made on the old grounds only.

Now from the side of the workman it was argued that this claimant Shri V. P. Gupta was a workman and not a supervisor because he was promoted on 1st June, 1972, from a clerk and dismissed as such, i.e., chargeman security on 12th September, 1979, he performed duty of a

workman. He had no power to recruit or remove a person from service, worked for 6 to 7 hours out of eight as a clerk.

In reply to these objections the representative of the management drew my attention towards the demand notice of Shri V. P. Gupta, claimant, in which this reference was made to this court. The workman did not file any separate claim statement and got his demand notice treated as his claim statement. The very first argument advanced from management side is that his demand notice if gone through will reveal that Shri V. P. Gupta, claimant, has himself admitted his salary as Rs. 581 per mensem and also the designation of chargeman security. He has nowhere even once said that he is a workman under the Industrial Disputes Act. Secondly the management in its written statement objected to Shri V. P. Gupta raising a demand and making of Government a reference which was bad in law, as Shri V. P. Gupta, claimant was not a workman. The claimant still did take a stand of his demand notice and neither applied for amendment nor do anything else. The maximum he did was that in his rejoinder he denied the contention of the management, that he was not a workman I think this argument of the representative of the management sounds law and logic both. The next reply of the management was that Shri V. P. Gupta, claimant, has not brought anything on record documentary, which could prove that he worked for 6 to 7 hours as a clerk. He could easily summon the record of the respondent-management to show the amount of work he did as a clerk, even after being given adequate opportunity for that by this court. The next reply of the management representative was that he could not employ or remove a person, but he certainly could recommend such things on which a person could be employed or removed, promoted or increments could be granted to him. According to MW-1 Shri S. S. Saini said he maintained only three registers which are of casual nature, they are visitor register, material in-coming register and out-going register.

I have myself gone through these registers and have seen them. Extracts of such entries were got prepared by me

from the management representative for any two months which they produced at the time of arguments. These entries first I compared with these registers and found them in some number in each register and now give Exhibit Nos to them as C-1 and C-2 and make them part of the file of this court, because the management did not want to part with the registers, these extracts of all the three registers are for the months of April and May, 1979 which were picked up at random.

The contention of the workman is falsified after going through the registers. The entries would maximum take 10 to 30 minutes if done I feel. So the workman at least had maximum writing work of 30 minutes in 8 hours duty I feel.

The representative of workman relied upon 1977-LLN. Vol. II, Page 517 (Bombay) and the other citation relied upon is AIR-1969-Page 554 (Para 28) (S.C.). In these citations their Lordships of Hon'ble High Court of Bombay and the Supreme Court have differentiated the duties of a workman, a supervisor and a manager. In the present case it is agreed that Shri V. P. Gupta, claimant, could not act like a manager because he could not directly employed or remove a person, but it is also a fact that on his recommendation the managerial staff would take action. That is what is a difference between a manager and a supervisor and a workman is a person who canot even recomend any thing for himself or any body else. In the Industrial Disputes Act also a worker is below the supervisor who again is below the manager, was argued on behalf of management. They say section 2(s) of the Industrial Disputes Act is very clear in itself and they relied upon Burmashell Oil storage and distributing company of India case in Lab. Industrial cases 1971—Page 699(S.C.) In this their Lordships have clearly held that a workman must be held doing that work in his main work. So the main work of Shri V. P. Gupta was not clerical, from that he was promoted now his main work was security of the respondent factory. I agree with the contention of the representative of the

The next argument of the workman representative was that even if he sanctioned leave he could not be

called a supervisor. He relied on 1978-LLJ-Vol. I, Page 105 (Gujrat). In this ruling their Lordships have said the same thing as argued by the representative of the workman but the other ruling of Burmashell, does not get over-ruled by it, was the arguments of the representative of the management with whom I fully agree, secondly Shri V. P. Gupta not only sanctioned the leave of workman as on Exhibit M-1 to M-7 but he did other works also like drawing of material making recommendations for promotions and increments and getting work from his subordinate. He has himself admitted in cross-examination that he got material loaded and unloaded weighed etc., but he has not said it that he did all these works himself.

Now the other citation relied upon by the repersentative of the workman is 1980-LLJ-Vol. II Page 116 (Madras). In this citation it was ruled by their Lordship that a foreman carpentry was not a foreman, but carpentry in itself is a job of a workman but security is not the work of a workman, but of a more important man of responsibility and Shri V. P. Gupta was that, I agree with this contention of the representative of the management. The representative of the workman next argued is that his eyes, ears, hands, legs, i.e., physical self was involved when he did his duty. The reply of the reprsenta-tive of the management was that all these organs of even of a manager or a supervisor are also involved when they perform their duties. This is quite correct. The medical fitness I hope is also required of a person high or law because his organs are required to be involved in performance of his duty.

The arguments advanced by the management representative was that claimant V. P. Gupta had powers to retain his staff on over time duty and such a duty could not be vesting with a workman. The representative of workman relied upon 1956-LLJ-Vol. II, Page 459 (Lab. App. Tribunal) Cownpore Tanery Ltd., and their workmen (Cownpore Tanery Workers Union), it was held as under :—

“When the main duties of a person employed as a gate sergeant to be in charge of watch and ward

staff of a tannery were to look after the security of the property of the factory by seeing that the watchmen and jamadars under him perform their duties properly and efficiently and thus to make rounds to supervise them and to recommend necessary disciplinary action in proper cases, it could not be said that duties performed by him were either clerical or manual. The fact that he has to maintain some registers must be held only ancillary or incidental to his main duties.

In the circumstances, such an employee must be held to be not a "workman" within the meaning of the Act."

After this ruling nothing is left to be argued. It is a case fool proof on all force and of a security staff person. Shri V. P. Gupta was a Security Inspector and he did the writing duty as his ancillary duty only I feel.

The next citation given by the representative of the management is Mohan Lal Kaul and the State of Rajasthan 1971-LLJ—Vol. II, Page 291 (Rajasthan).

In this ruling also it has been advised that the duties have to be seen. If it is of administration he is not a workman. Shri V. P. Gupta got the work done and himself did very little by himself like staying at factory gate if gate man went temporarily for taking tea etc.

Last of all the representative of the management relied upon FJR-Vol. 55 Page 389 (Madras) in which it was held by their Lordships that once a reference is rejected by the Government it cannot be referred to court in absence of fresh materials before it. The representative of the workman has not shown me any ruling in contravention of this citation and, therefore, I am constrained to agree with their Lordships of the Madras High Court.

In his reply of arguments of management the representative of the workman cited 1979-LLJ Vol. I, Page 1 S.C.) Avon

Services case in which their Lordship were pleased to hold that lack of evidence is fatal to the stand taken by a party, and the workmen have not been able to adduce evidence to substantiate their case, and, therefore, Shri V. P. Gupta should be declared a workman and this issue should be decided in his favour, but I am afraid I cannot agree with this contention of the workman representative. The issue under discussion is an issue onus of which is on the workmen and not on the management. The management on this issue is to rebut the stand of the claimant Shri V. P. Gupta. Secondly there is no lacking from the side of the management in leading its evidence on this issue to dislodge the claimant Shri V. P. Gupta, from his stand and the management has fully been able to do so in their evidence documentary and oral.

So having discussed this issue No. 1 in above lines I hold that Shri V. P. Gupta does not fall under the definition of a workman and this issue is decided against him and in favour of the management M/s Delton Cables (P.) Ltd., respondents.

ISSUE NO. 2

Since I have decided that Shri V. P. Gupta is not a workman in the issue No. 1, therefore, this is held that this reference is bad in law on the objections raised in written statement. This issue is, therefore, decided in favour of the management respondent M/s Delton Cables (P.) Ltd., and against the claimant Shri V. P. Gupta.

Since both the preliminary issues have been decided against Shri V. P. Gupta claimant and the reference has been decided to be bad in law, there is no need to go into other issues further.

This be read in answer of this reference. No order as to costs.

The 26th February, 1981.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 520, dated 5th March, 1981.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana. Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947 with the request that acknowledgement of the award may please be sent to this court within a week time.

ISHWAR PRASAD CHAUDHRY,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)81-8Lab./4232.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workmen and the management of M/s Administrator Municipality, Bhiwani. BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK.

Reference No. 94 of 1979

between

SHRI NARINDER NATH, WORKMAN AND THE MANAGEMENT OF M/S ADMINISTRATOR, MUNICIPALITY, BHIWANI.

Present—

Shri Sagar Ram Gupta, for the workman.

Shri Shiv Shankar, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/HSR/8-79/17734, dated 26th April, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Narinder Nath, workman and the management of M/s Administrator, Municipality, Bhiwani. The term of the reference was:—

“Whether the termination of services of Shri Narinder Nath was justified and in order ? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties put in their appearance in response to the same on 11th June, 1979, filed their respective pleadings on the basis of which the following issues were framed on 13th March, 1979:—

- (1) Whether the Municipality, Bhiwani is not covered between the definition of Industry in view of the Supreme Court ruling in Bangalore Water Supply and Sewerage Corp. of 1978 ?
- (2) Whether this court has no jurisdiction to entertain the reference ?
- (3) As per reference.

The evidence of the management was recorded on 29th July, 1980. The only witness examined on behalf of the management was Shri Bhoom Singh, the Head Clerk on the respondent. The workman did not propose to adduce any evidence and he closed his case on the same day. I heard the arguments of the parties and have also perused the evidence oral as well as documentary available on the record carefully and decide the issues as under:—

ISSUES NO. 1 AND 2

The management did not adduce any evidence on these issues and the management did not make any submissions during the course of arguments. These issues are therefore decided against the management.

ISSUE NO. 3

The brief facts of the case which are admitted on both sides are that the workman was working with the respondent as Octroi Clerk since 1959 and was suspended on 6th December, 1974. He was finally dismissed on 19th April, 1976. The workman preferred an appeal against the order of dismissal dated 19th April, 1976 before the Deputy Commissioner, Bhiwani who,—vide his order dated 18th October, 1977 reinstated the workman while setting aside the dismissal order. The respondent implemented the order of the Deputy Commissioner, Bhiwani and reinstated the workman on 17th November, 1977 and the workman received the pay

for the month of December, 1977 and January, 1978, and his services were again terminated,—*vide* special order No. 54, dated 22nd December, 1978 passed by the Administrator, Municipality, Bhiwani. The workman served the demand notice on the management against the order dated 22nd December, 1978 on which conciliation proceedings were held and on the failure report of the Conciliation Officer the Government referred the dispute,—*vide* the order of reference mentioned above. The workman has alleged in his notice of demand that he was suspended and dismissed on account of his trade union activities and he was made a victim during the days of emergency when terror was prevailing all around and his dismissal on 22nd December, 1978 was also linked with the same old chain of events and in pursuance of the policy of victimization. He has further alleged in the rejoinder that the order of the Deputy Commissioner was quite legal and in order and the jurisdiction of the Deputy Commissioner was never challenged during the course of proceedings before him. The termination was illegal and arbitrary. The case of the management as has been given in the written statement is that the workman was rightly dismissed under section 40 of the Haryana Municipal Act, 1973 on 19th April, 1976 and the appeal only lies to the Commissioner of the Division, Hissar Division in case of Bhiwani, Municipality which is a 1st class Municipal Committee and rule 4 of the Dismissal of the Employees Rules framed under section 240 of the Punjab Municipal Act, 1911 which is also applicable to the State of Haryana provides for the same. The Municipal Committee sought clarification regarding the legality and competency of the order of the Deputy Commissioner while requesting the Deputy Commissioner to seek approval of the Commissioner, Hissar Division, Hissar. The Commissioner did not approve the order of the Deputy Commissioner and as such the dismissal order dated 19th April, 1976 became final. The management has also stated in later part of para 3 of the written statement that the workman was informed by the Secretary and Commissioner, Vigilance Department, Haryana,—*vide* the letter No. 3878 (Choksi

gupt) dated 31st July, 1976 that the order of dismissal dated 19th April, 1976 was legal and unless the same was satisfied by the Competent Authority i.e., Commissioner, Hissar Division Hissar, he cannot be taken into service. The management denied the allegation of victimization for any trade union activities and also denied having taken advantage of the emergency period as the workman was placed under suspension on 6th December, 1974 long before the proclamation of emergency. The management has also contended that the order dated 18th October, 1977 of the Deputy Commissioner was without authority and a nullity and the respondent was not bound by that and the workman cannot be allowed to take advantage of his own negligence under any provision of law. The special order No. 54, dated 22nd December, 1978 was passed by the Administrator, Bhiwani Municipality in view of the decision of the Commissioner, Hissar Division,—*vide* letter No. LF/253/FFA/18066, dated 1st December, 1978 conveyed,—*vide* Deputy Commissioner, Bhiwani letter No. 2024/PB/dated 12th December, 1978 in continuance of audit objection contained in para 9 part II of annual audit report for the period 1977-78.

From the facts narrated above it is clear that Punjab Municipal Act, 1911 is applicable to the State of Haryana also and under rule 4 framed under section 240 of this Act the Commissioner of the Division is the appellate authority in case of 1st class Municipality and not the Deputy Commissioner. The workman went in appeal against the dismissal order dated 19th April, 1976 before the Deputy Commissioner who while assuming the jurisdiction which he actually did not possess passed order dated 18th October, 1977, which cannot be considered a valid and proper order and hence a nullity and no order in the eyes of law. This order would have been made legal and valid if the Commissioner, Hissar Division Hissar had given his approval but on the contrary the Commissioner refused the approval and the order dated 19th April, 1976 stood confirmed. Under the circumstances when the workman was reinstated,—*vide* order of the Deputy Commissioner which in itself became in-operative in view of the decision

of the Commissioner contained in letter No. LF/253/FFA/18066, dated 1st December, 1978, the question of allowing the workman to continue in service will be an illegal and improper act of the Administrator of the Municipality invitng further audit objections and he himself might have been in trouble if he had not issued the order dated 22nd December, 1978 and in these circumstances I don't think if there was any mala fide intention imputable to the Administrator in issuing the disputed order. As the demand relates to the order dated 22nd December, 1978 which has led to this reference I am not empowered to go into the circumstances under which the previous order of termination dated 19th April, 1976 was passed as that will be going beyond the order of reference and I also hold that the reinstatement on the basis of an invalid and illegal order was also invalid and illegal the workman would have raised the demand on the basis of his termination order dated 19th April, 1976 which is still operative as the same has not been set aside. As for as this reference is concerned I answer that the action of the management is justified and proper and the workman is not entitled to any relief either of reinstatement or of back wages while returning the same in these terms. Dated the 31st March, 1981.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 867, dated 2nd April, 1981.

Forwarded, (four copies), to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Dispute Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.
The 21st April, 1981.

No. 9(1)-81-8Lab./4455.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between

the workman and the management of M/s The Panipat Coop Distillery, Panipat.

BEFORE SHRI BANWARI LAL DALAL,
PRESIDING OFFICER, LABOUR
COURT, HARYANA, ROHTAK.

Reference No. 279 of 78.

between

SHRI SUBHASH CHANDER KHATTER,
WORKMAN AND THE MANAGE-
MENT OF M/S THE PANIPAT COOP.
DISTILLERY, PANIPAT.

Present:—

Shri D. P. Pathik, for the workman.
Shri R. S. Malik, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—vide his order No. ID/KNL/69-78/44395, dated 9th October, 1978, under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri Subhash Chander, workman and the management of M/s The Panipat Coop. Distillery, Panipat. The term of the reference was:—

Whether the termination of services of Shri Subhash Chander Khatter was justified and in order? If not to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared in response to the same, filed their respective pleadings and following issues were framed on the basis of the pleadings of the parties:—

1. Whether the termination of services of the workman was justified and in order?
2. If not, to what relief is he entitled?

The management examined Shri Chander Parkash, Time Keeper as MW-1, Ram Singh, the Distillery Manager as MW-2 and then closed their case on 21st May, 1979. The workman Shri Subhash Chander was examined as WW-1 and closed his case on 23rd July, 1979. The parties addressed arguments and also filed

their written arguments. I have considered the evidence oral as well as documentary produced by the parties and gone through their written arguments and decide the issues as under.

ISSUE NO. 1 AND 2:

In his demand notice the workman has alleged that his services were terminated on 17th May, 1978,—vide order No. ECD 77-78/3269, illegally. He was charged of disobeying the order of his superiors thereby causing loss to the factory. Enquiry was held into the charges and the second charge of causing loss to the distillery was not proved as no evidence was led by the management on this charge and the termination was therefore illegal. He has further alleged that his dismissal was affected under pre-planned scheme. The workman pleaded the same facts in his claim statement.

The management in their written statement alleged that the workman was suspended on 29th November, 1977, for committing an act of misconduct on 16th November, 1977, while the workman disobeyed the lawful orders of his superiors when he refused to do the welding work which he had been doing although he was a helper in the engineering department. He was found guilty of misconduct by the enquiry officer and the workman was accordingly dismissed taking in view his record of past service. Shri Ram Sarup who was examined as MW-2 has stated that he was the Assistant Distillery Manager and was appointed as enquiry officer in the case of Subhash Chander workman. Ex. M-5, were the enquiry proceedings conducted by him. The enquiry report was Ex. M-6. The workman participated in enquiry, cross examined the witnesses and produced his defence. The workman also signed the proceedings in the margin of the enquiry proceedings on every page in Hindi. Only one charge was proved against the workman which was the refusal to obey the orders. The workman could not draw out from the witness MW-2 anything which goes to prove the partiality or anything making the findings as perverse or that the workman was not given the reasonable opportunity of cross examination or for production of his defence. I have also gone

through the enquiry file and the proceedings recorded there in and have also read the findings submitted by the enquiry officer which in my opinion is fair and proper and based on the evidence placed on record before him during the course of enquiry and can in no way be said to be vitiated and perverse. It is also in accordance with the principles of natural justice. I am not impressed to any extent by the statement of the workman that the Enquiry Officer did not consider his letter Ex. W-1 and did not dispose of the same and that he did not disobey any order of his seniors and only wanted written orders while considering the evidence of both the parties as a whole I am inclined to arrive at the conclusion that the workman disobeyed the orders of his superiors but at the same time the superior officers were also hesitant for giving written orders and in fact they did not take the responsibility in writing which has given an excuse to the workman through unreasonable one for refusing the orders and moreover it has been proved that no loss was caused to the distillery for this act of the workman. I am therefore constrained to hold that the punishment given to the workman is harsh and excessive as compared to his offence, and the workman deserved a lesser punishment. I therefore order for his reinstatement with continuity of service but without back wages while setting aside the order of termination which is harsh and unjustified as compared to the offence proved against the workman. The reference is answered and returned in these terms.

Dated the 4th April, 1981.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.
Endorsement No. 966, dated 13th April, 1981.

Forwarded. (four copies), to the Secretary to Government of Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.